

CONFIDENTIAL.

(6153.)

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403

PART 3.

FURTHER CORRESPONDENCE

RESPECTING THE

AFFAIRS OF TUNIS.

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1891.

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CONFIDENTIAL.

Further Correspondence respecting the Affairs of Tunis.

PART 3.

No. 1.

Intelligence Division to Foreign Office.—(Received January 2, 1891.)

THE Director of Military Intelligence presents his compliments to the Under-Secretary of State for Foreign Affairs, and, with reference to his despatch of the 20th December last, begs to forward the accompanying Memorandum on Mr. Drummond Hay's despatch No. 69, Secret, which he returns, with its inclosures.

*Intelligence Division, 18, Queen Anne's Gate,
January 1, 1891.*

Inclosure in No. 1.

Memorandum by Lieutenant-General Brackenbury, C.B., Director of Military Intelligence, on Consul Drummond Hay's Report on the projected Port at Bizerta.

THE information contained in Consul Drummond Hay's No. 69, Secret, is little more than a confirmation of what we have already heard.

From the time when, during the early stage of the French expedition to Tunis in 1881, the Chef du Cabinet of the Minister of War solemnly denied to me that there was the slightest intention of occupying Bizerta, although I had seen all the elaborate Maps and plans of that place on the table of the Head of the French Intelligence Department, it has always been my conviction that the chief object of the French occupation of Tunis was to establish a strong naval position at Bizerta, which will greatly alter the strategical conditions of naval warfare in the Mediterranean.

The question is rather one for the Admiralty than for the War Office, but one need not be a sailor, or a soldier, to understand with the Map of the Mediterranean before one the influence which a powerful French naval establishment on the direct line to Egypt, and in proximity to Malta, will exercise upon the British naval power upon that sea.

It is, in my opinion, absurd to suppose that the projected canal, of which we have now for a long time heard, can be intended for commercial purposes, and equally absurd to suppose that the expense of constructing such a canal would be incurred with any other object than that of creating a naval station in the inner lake.

Were proof wanted of the non-commercial character of the proposed port it would be found in the fact that the Beylical Government, instead of, as usual, demanding money for a Concession, actually paid the sum of 9,000,000 fr. in cash, or its equivalent monopoly of fisheries, to the promoters of the Company formed for its construction.

It may be taken as a certainty that such a station, if created, will be powerfully fortified.

In 1887 we received from a private source a tracing of a French official contoured Map of Bizerta and the neighbourhood on a scale of 1:100,000, with positions marked

upon it which had been selected for eight proposed forts, and we have had constant Reports since of the intention to make the canal and naval station.

The following extract from a Report by the Budget Committee of the Chamber, on the Naval Budget for 1889, gives an authoritative French view on the subject:—

"Il est vraisemblable qu'aucun autre centre de ravitaillement en dehors de ceux de la Corse, de l'Algérie, et de la Tunisie ne nous serait ouvert à l'extérieur en temps de guerre. L'importance de tous ces centres, en particulier des derniers, est si grande que l'attention de la Marine doit être toujours en éveil sur eux.

Le bassin de la Méditerranée où nous entretenons une force capable de se faire respecter ne saurait jamais nous offrir trop de points où nos navires puissent se ravitailler, refaire leurs munitions et leur charbon. Nous insistons donc pour que le Gouvernement porte toute sa vigilance sur le développement de nos établissements de la Corse, de l'Algérie, et de la Tunisie. Il y a deux ans, le Département avait placé en Corse un Contre-Amiral avec mission d'organiser la défense de cette île et d'y créer des refuges de torpilleurs. Il en était de même de Bizerte, où des efforts avaient été faits pour approfondir les passes.* Ces tentatives paraissent avoir été abandonnées depuis lors et ce recul n'est pas sans alarmer vivement tous ceux qui entrevoient le rôle important de ces localités dans une guerre maritime dont la Méditerranée serait le théâtre."

Attention is also invited to the last four paragraphs of the extract from M. Paul Bourde's article in "La Dépêche Tunisienne" forming the inclosure to Consul Drummond Hay's No. 21 of the 8th March, 1890.

(Signed)

H. BRACKENBURY,

Director of Military Intelligence.

January 1, 1891.

No. 2.

The Marquis of Salisbury to Sir W. White.

(No. 4.)

(Telegraphic.) P.

Foreign Office, January 5, 1891, 5:35 P.M.

IS it true that your German and French colleagues have been making representations to the Porte with the object of dissuading the Sultan from entering into an agreement with France for the rectification of the frontier of Tripoli?

Do you consider it at all probable that the Sultan will at last yield on this point?

No. 3.

Sir W. White to the Marquis of Salisbury.—(Received January 6.)

(No. 4.)

(Telegraphic.) P.

Constantinople, January 6, 1891.

WITH reference to your Lordship's telegram No. 4 of yesterday's date, on the subject of the rectification of the frontier of Tripoli, I have the honour to report that here it is denied that any representations have been made by either Italy or Germany, in the sense which French journalists have ascribed to them. Any such rectification would, however, I believe, be viewed by them, especially by the Italians, with great dislike.

The Porte, according to the Grand Vizier, entertains no such idea, as the legality of the presence of the French in Tunis is not admitted by them.

No. 4.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received January 8, 1891.)

(No. 89.)

My Lord,

Tunis, December 31, 1890.

I HAVE the honour to inform your Lordship that Dr. Reitz, who was appointed Consul for Germany in Tunis last year, has been promoted by his Government to the rank of Consul-General. He has thus been placed on a more satisfactory footing as regards his colleagues, the Spanish Chargé d'Affaires, the Italian Agent and Consul-General, and the Austro-Hungarian Consul-General.

This step has doubtless been taken by the German Government with a view of

* Referring to boring along proposed channel to ascertain nature of substratum.

marking the interest they take in the future of this country since the French occupation, and also of improving the official position of their Agent, although Germany, unlike England and Italy, has no Colony nor any important commercial interests in the Regency.

I have, &c.
(Signed)

R. DRUMMOND HAY.

No. 5.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received January 15.)

(No. 1.)

My Lord,

Tunis, January 7, 1891.

I HAVE the honour to transmit to your Lordship herewith an article on Bizerta extracted from the French journal "Le Petit Marseillais" of the 2nd instant, and I beg leave to draw your Lordship's attention to the paragraphs I have marked, which make no concealment of the true designs of France in these parts.

The writer warns his countrymen against allowing British or Italian colonization to interfere with the future of French trade, pointing out that the time is now close at hand when the port will be completely transformed, as dredges are already opening up the canal leading to the lake, where quays will be formed for the moorage of vessels of any tonnage. After referring to the climate and other advantages of Bizerta for colonization, and making some inaccurate statements with respect to the purchase of land in the vicinity of the port by the Honourable Terence Bourke, he points out that Bizerta enjoys an exceptionally important geographical position in the Mediterranean, and will become not only an important commercial and industrial centre, but also a strategical place of the first order—a military port occupying a position for the defence of the "great Franco-African Colony," similar to that of Toulon for the south of France.

The article concludes with the remarks that no better port of refuge could be found in the Algerian and Tunisian coasts for the operations of French squadrons in the Mediterranean. Toulon, Bonifaccio, and Bizerta will form a grand line of naval defence which will baffle all attempts of the Italian fleet in the Mediterranean.

Bizerta will become the rival of Malta, possessing all that is required for that purpose, with the advantage of being situated on the African mainland and in railway communication with an exceptionally fertile country.

I have, &c.
(Signed)

R. DRUMMOND HAY.

Inclosure in No. 5.

Extract from "Le Petit Marseillais" of January 2, 1891.

BIZERTE.—Ce n'est pas la première fois que nous signalons à l'attention de nos lecteurs ce port de Bizerte, si admirablement situé sur la côte Tunisienne, qu'il semble devoir faire un jour concurrence à la capitale de la Régence, si celle-ci n'était douée d'assez de vitalité pour conserver quand même un rôle prépondérant.

La question de Bizerte a d'autant plus d'opportunité pour la France, que l'on sait avec quelle ténacité les nations riveraines de la Méditerranée combattent notre influence au nord de l'Afrique, sur les territoires mêmes où nos droits sont incontestés.

L'élément Italien et l'élément Espagnol occupent en Algérie aussi bien qu'en Tunisie, une place presque aussi importante que l'élément Français, où ils nous créent souvent des embarras assez graves, sans compter le préjudice qu'ils portent à nos colons par leur activité commerciale et industrielle.

Il serait donc temps de songer à faire de Bizerte, qui n'est encore qu'une ville Arabe, une ville essentiellement Française, avant qu'elle devint une cité cosmopolite, où les Italiens, les Espagnols, et même les Anglais cherchent à exploiter au détriment des rares Français qui voudront y tenter fortune.

Le moment est proche, en effet, où Bizerte sera complètement transformée. Déjà les dragues creusent le chenal qui conduit à la lagune intérieure qui sera incessamment bardée de quais où viendront s'amarrer les bâtiments de tout tonnage; tandis que deux digues s'avancent dans la mer protégeront ce chenal contre de nouveaux envasements.

D'ailleurs, tout doit nous attirer autour de cette vieille cité Arabe où l'élément Européen n'a commencé à faire sa place que depuis l'occupation Française; le climat, qui est un des plus sains de la côte, la fertilité du sol, l'extrême bon marché de la main-d'œuvre Arabe, la proximité des ports de Toulon et de Marseille, qui permettrait d'établir avec le Midi de la France des relations autrement plus rapides et plus commodes qu'avec Tunis, &c.

Un des plus infaillibles symptômes de l'avenir de Bizerte est l'attention dont elle a déjà été l'objet de la part des Anglais; on connaît le flair de ceux-ci quand il s'agit de découvrir une nouvelle terre à exploiter, et l'exemple que nous cite M. Léon Moncelon dans une communication qu'il vient d'adresser à la Société de Géographie Commerciale de Paris, est trop caractéristique pour que nous ne le reproduisions pas ici:—

"Un Anglais, M. Bourke, au moment de notre occupation, sut si bien épouvanter les malheureux Arabes par un tableau imagé de nos exactions futures, qu'il put, finalement, s'approprier en les éloignant, une zone splendide occupant la partie nord des lacs au prix de 80,000 fr. La propriété en question est déjà estimée à plus de 4 millions. Voilà, n'est-ce pas, qui prouve quelle grande foi ceux qui connaissent le pays peuvent avoir en son avenir."

M. Moncelon, qui a visité Bizerte en voyageur ayant déjà vu beaucoup de pays et par conséquent incapable de "s'emballer à blanc," comme il le dit lui-même, nous vante la douceur du climat, qu'il compare à celui de Montevideo, et par conséquent propre aussi bien aux cultures de la zone tempérée qu'à celles de la zone tropicale. La région se serait peut-être déjà peuplée de colons Européens, sans la difficulté des transactions avec les Arabes, ceux-ci consentant difficilement à vendre leur terre, et quand ils y consentent, l'acheteur n'est jamais bien sûr de jouir de sa propriété en toute sécurité, le vendeur n'ayant lui-même aucun titre régulier établissant ses droits au moment de la transaction.

Cette situation, jointe aux difficultés qui résultent, là comme partout, de la pape-rasserie Française, rend les achats de terre extrêmement rares; mais il serait facile au Gouvernement du Protectorat de simplifier les formalités à remplir et de donner aux acheteurs des garanties sérieuses. C'est, sans doute, grâce à ces conditions que la vie, en dehors de notre confort de convention, est encore d'un extrême bon marché à Bizerte. Voici, sur ce sujet, quelques renseignements intéressants que nous empruntons au récit de M. Moncelon:—

"Ainsi," écrit-il, "dans l'espèce d'hôtel où, sur une immense terrasse, j'occupe une monastique cellule Arabe, j'ai le gîte et la table à raison de 3 fr. par jour, service compris. . . . J'ai le café le matin, trois plats à chaque repas, et tous les égards des maîtres de la maison. Il est vrai que je cire mes bottes moi-même, lorsque je parviens à saisir une brosse quelque part. . . . Mais, à cela près, je m'estime heureux d'avoir pu me mettre à couvert dans ce vieux trou arabisant où dans cinq ans sans doute s'élèveront maintes succursales de l'Hôtel du Louvre et du Continental. Les vins sont excellents, et se boivent à très bon compte à Bizerte; beaucoup se rapprochent de nos anciens bons Bourgogne, ce qui présage un riche avenir aussi, de ce chef, important pour la Tunisie."

En dehors de toutes ces considérations économiques et climatériques un intérêt d'un ordre plus élevé doit mériter à Bizerte toute la sollicitude du Gouvernement Français. Cette ville, comme nous ne cesserons de le répéter, jouit d'une position géographique exceptionnelle dans le bassin Méditerranéen; elle est appelée à devenir plus encore qu'un grand centre industriel et commercial, elle doit devenir une place stratégique de premier ordre, un port militaire jouant pour la défense de notre grande Colonie Africaine, le même rôle que Toulon, pour le Midi de la France.

Nulle part, sur toute la côte de Tunisie et d'Algérie, nos escadres opérant dans la Méditerranée, ne pourraient trouver un meilleur port de refuge et de ravitaillement; en même temps qu'un meilleur poste d'observation. Toulon, Bonifacio, et Bizerte doivent former une grande ligne de défense maritime pouvant déjouer toutes les tentatives de la flotte Italienne dans la Méditerranée. En un mot, il faut que Bizerte devienne le pendant de Malte; elle a tout ce qu'il faut pour cela, avec l'avantage d'être rattachée au Continent Africain, et de pouvoir servir de tête de ligne à un réseau de voies ferrées desservant un pays exceptionnellement fertile.

No. 6.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received January 13.)

(No. 2.)

My Lord,

Tunis, January 7, 1891.

WITH reference to my despatch No. 87 of the 15th ultimo, I have the honour to report to your Lordship the final settlement of the Kairwan outrage question by the payment to me on the 5th instant of the sum of 150l., being the balance of the compensation demanded from the Tunisian Government.

This sum has been paid over to Battista and Francesco Grech this day, and I have transmitted a receipt to the Resident-General, of which I beg to inclose a copy.

I have, &c.

(Signed) R. DRUMMOND HAY.

Inclosure in No. 6.

Receipt handed by Consul Drummond Hay to the Resident-General.

LE Consul d'Angleterre soussigné reconnaît avoir reçu la somme de 5,000 fr. pour le compte des nommés Francesco et Battista Grech. Moyennant le paiement de cette somme les susnommés renoncent à toute réclamation présente et avenir contre le Gouvernement Tunisien à raison du préjudice qui leur aurait été causé lors de leur incarcération par le Commissaire et les agents de police de Kairouan. Le Consulat d'Angleterre à Tunis renonce également à toute réclamation relative à la même affaire.

(Signé)

R. DRUMMOND HAY,

Her Britannic Majesty's Consul.

Tunis, le 5 Janvier, 1891.

No. 7.

Foreign Office to Consul R. Drummond Hay.

(No. 1.)

Sir,

Foreign Office, January 16, 1891.

WITH reference to your despatch No. 2 of the 7th instant, reporting the final settlement of the Kairwan outrage question, I am directed by the Marquis of Salisbury to express to you his approval of the successful steps which you have taken to obtain compensation from the Tunisian Government.

I am, &c.

(Signed) P. CURRIE.

No. 8.

The Marquis of Salisbury to Sir W. White.

(No. 7.)

(Telegraphic.) P.

Foreign Office, January 23, 1891, 6.30 P.M.

TRIPOLI frontier.

The German Chargé d'Affaires tells me that his Government are very anxious that your Excellency should inform the Porte of the concurrence of Her Majesty's Government in the representations recently made by the German Ambassador at Constantinople.

I do not exactly understand why they are so urgent, but, as the matter did not seem worth making a difficulty about, I promised that I would instruct you in the sense desired.

No. 9.

Sir W. White to the Marquis of Salisbury.—(Received January 26.)

(No. 18. Confidential.)

My Lord,

Constantinople, January 17, 1891.

IN reply to your Lordship's inquiries, I had the honour to report in my telegram on the 7th instant, on the subject of the alleged proposed rectification of the Tunisian

frontier on the side of Tripoli, and of supposed representations to the Sublime Porte having been made here by Germany and Italy, as stated by French newspapers, that no such representations had been made by either of these two Embassies; and that, according to the Grand Vizier, the Porte "entertains no such idea, as the legality of the presence of the French in Tunis is not admitted by them."

The Italian Ambassador maintains his denial, but I presume that his Excellency would not consider himself bound to tell me anything on the subject, as I notice that he is under the impression that his Government is not kept sufficiently informed by our own of our communications with other Cabinets with regard to Africa.

A couple of days after I sent off my Report to your Lordship, Herr von Winckler, the Imperial German Chargé d'Affaires (M. de Radowitz being absent) called and kindly volunteered an explanation that the denial of representations having been made on the subject of the Tripolitan frontier question applied to official ones, and did not exclude unofficial remarks made on the subject by the Ambassador previous to his departure on leave.

Last night Herr von Winckler called again, and went into full and frank details of the instructions he had received from Berlin on this subject, and which he had carried out by telling the Sublime Porte that the group of friendly Powers interested in the preservation of the territorial *status quo* of the Ottoman Empire could not view with indifference any cession of territory, however small or insignificant, on the side of Tripoli, even under the form of a so-called rectification.

He farther informed me that the Grand Vizier had given him the denial of any such intention, which I had the honour to report to your Lordship on the 7th instant; and, on my telling M. de Winckler that the question put by me to the Grand Vizier was merely for the purpose of eliciting information as to the views of Turkey, as I had no instructions whatever to make any observations on this question, and had made none, he observed that I would probably receive similar instructions shortly.

I have, &c.
(Signed) W. A. WHITE.

No. 10.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received January 28.)

(No. 3.)

My Lord,

Tunis, January 23, 1891.

WITH reference to my despatch No. 59 of the 2nd September, 1890, I have the honour to inform your Lordship that Mr. Galea, British Vice-Consul at Susa, while on a visit to Gabes, met the Governor-General Allegro, who communicated to him his version of the encounter that took place in July last between the French Spahis and the Secan tribe on the Tripolitan frontier.

The General stated that part of a revolted Tunisian tribe, called the Uderna, inhabiting Tripolitan territory, crossed the frontier on the 26th July, 1890, accompanied by several of the Secan tribe, with the intention of submitting to the Tunisian authorities. The Lieutenant-Governor of the district refused, however, to listen to their proposals, and ordered them to recross the frontier until their submission had been formally accepted and recognized by the Beylical Government.

The French Military Commander then took advantage of the retreat of the tribes to dispatch 100 Spahis to seize their sheep, numbering 3,000 head. Thirty of the Uderna and Secana thereupon returned on horseback to claim their property, but as soon as they were seen by the Spahis the latter opened fire, killing twelve men besides their horses, and making five prisoners.

The General assured Mr. Galea that the Commander had acted without the authority of his Colonel or of the Governor, and that he was severely censured for his conduct.

I have thought it my duty to communicate to your Lordship this account of what took place, as it emanates from the Governor of the district where the incident occurred, and generally confirms the Reports that I furnished at the time.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 11.

The Marquis of Salisbury to Sir W. White.

(No. 8.)

(Telegraphic.) P.

Foreign Office, January 28, 1891, 2 P.M.

THE statement of the Italian Ambassador at Constantinople, which your Excellency mentions in a private letter, to the effect that Her Majesty's Government are concealing from the Italians some arrangements which they are making with France respecting North Africa, is absolutely devoid of foundation.

I have urged the French Government, through M. Waddington, to refrain from any military construction at Bizerta; but beyond this no communications whatever have passed between Her Majesty's Government and the French Government on the subject of North Africa.

No. 12.

Memorandum respecting Bizerta as a French Naval Port.—(Communicated by Naval Intelligence Department, January 29.)

(Secret.)

ACCORDING to the view held in the English navy, the importance of Bizerta as a French naval position has been greatly over-estimated in certain quarters. It has been maintained—

1. That if Bizerta were made a strong "military port" Italy would be seriously threatened, and the position of England in the Mediterranean would be affected to a considerable extent;

2. That the fortification of the place and the construction of a military port there would greatly improve the position of France in the Mediterranean, and correspondingly damage that of Italy and England;

3. That if it were occupied by a great naval Power like France, the conditions of a war in the Mediterranean would be radically changed to the advantage of the French;

4. That as soon as Bizerta is made into a military port it will be perfectly easy to completely stop our Suez Canal trade between England and India, and to prevent the junction of the several English fleets;

5. That this will compel England to increase her naval force in the Mediterranean, leaving her trade still threatened, and denuding of ships the English Channel, the command of which it is absolutely necessary to her to retain.

In the English navy it is held by those who have studied the question that, even if Bizerta is made a great and strong naval station, not one of the above-enumerated results need necessarily occur.

It is not mere possession by the French of the Bizerta position, but the conversion by them of that place into a high class naval port, which is made a fundamental condition of increased French naval strength by those who maintain what has been quoted above.

The first point to be considered, therefore, is the probability of the establishment at Bizerta of a really formidable fortress and arsenal.

The English, with great interests in the Mediterranean, and still greater beyond, but connected with it, have been in possession of Gibraltar for nearly two centuries, and of Malta for nearly one. Notwithstanding this lengthened possession, and the non-existence of any other British naval base within 1,000 miles, not even at Malta is there a dockyard at all comparable in extent and resources with that at Toulon. At Bombay, for long the head-quarters of a separate navy, and the most important port in a great dependency, our retention of which during war was due to our maritime superiority, the scale of the naval establishments is still comparatively insignificant. If with inducements, such as no other country can have known, to construct at distant spots dockyards rivalling in size and equipment those at home, England has not done so, it may well be doubted if a country with smaller maritime interests is likely to be able to do what England has found impracticable or unadvisable.

Remembering the rapidity with which the great and strongly fortified dockyards at Spezia, at Kiel, at Wilhelmshaven, and elsewhere have been completed, it cannot be held that the construction of equally important works at Bizerta in a moderate space of time is impossible. Nevertheless, it is an indisputable fact that constructions on anything like a similar scale out of a mother-country are unknown.

To give some idea of the magnitude of the work which the French will have to

undertake in order to carry out the design attributed to them, the alleged dimensions of the future entrance canal may be adduced. Whatever merits Bizerta may have as a harbour when once entered, ships of the larger classes cannot get into it. To permit this it is alleged that a canal 218 yards wide and 37 feet in depth is to be made. Though the neck of land across which this canal is to be cut is not very wide, the water for a considerable extent on either side is shallow, and the approaches to a cutting must be at least as deep as the necessary minimum depth in the cutting itself, if the latter is to be of use. The distance from the 5-fathom line in the Mediterranean to the 5-fathom line inside Bizerta is more than a sea mile and a quarter; so that to form a channel even 30 feet in minimum depth throughout, and of the width asserted, would require excavations greatly exceeding in superficial extent the artificially excavated basin area of all the Government dockyards in France put together. This undertaking would be additional to the work necessary for the construction of the naval establishment itself and the fortifications. Even if the canal is not to be of the width alleged, owing to the depth which must be given to it to allow large ships in fighting trim to use it, its excavation would be a considerable work. This, it is to be observed, would be carried out at a point only 400 miles from an existing dockyard of the first class, between which and Bizerta lies only an expanse of open sea.

It has, however, been pointed out that because to transform Bizerta into a naval port may require very large sums of money and many years, this is no proof that the transformation will not be effected, since it is well known that when national defence is concerned funds are always voted. This is undoubtedly true, and therefore an examination of the question on the assumption that Bizerta has been converted into a naval station of importance is necessary.

The question might almost be settled by the statement of a very restricted series of alternatives:—

1. The French will either use Bizerta or not use it.
2. If they do use it, they will do so either with the whole or a part of their fleet.

If they do not use the place, it is needless to discuss the question. If they use it with their whole fleet, they will not only have given up a base of a very advantageous character at Toulon, which is seven or eight hours nearer to Gibraltar and to the probable point of junction with their Brest fleet, but they will also have burdened themselves with the maintenance of an additional line of communication. If they use Bizerta with only a part of their fleet, they will divide their force. In other words, they will voluntarily do for us just the very thing which it will be the object of our strategy to bring about. Though this statement virtually exhausts the subject, it is, nevertheless, advisable to examine it in closer detail in view of the special contingencies which the conversion of Bizerta into a great naval base has been held to render probable.

It is alleged that a fleet relying upon a fortified port at Bizerta would threaten the coasts of Sicily and Southern Italy much more effectually than they could be threatened from Toulon. The feasibility of transporting a large body of troops to Sardinia and Sicily in eight hours, and to Naples in twenty hours, has been assumed. The lowest figures at which the troops have been put are 20,000 infantry, 3,000 cavalry, with 24 to 36 guns; but a large army corps of 35,000 to 40,000 men, and even two army corps or 60,000 men, have more recently been given as the probable strength.

Without attempting to compute exactly the tonnage necessary, it is obvious that the transport of even the smallest body mentioned would require a large number of vessels. It is estimated in one of the documents in which the facility of a descent on Italian territory from Bizerta is assumed, that if it had to be made from Toulon more than a hundred vessels, besides an escorting squadron, would be required. It is not clear why an expedition starting from Bizerta could be accommodated in any considerably less number of vessels; but even if the transport were largely reduced it is quite certain that the assumed speed of 15 knots an hour could not be kept up if any order in the armada is to be preserved. No one with any experience of steaming at a moderately high speed in even a small squadron of men-of-war, with well-practised officers and crews, will suppose that a large fleet of transports is capable of orderly progress at a rapid rate. At whatever speed an organized collection of ships may proceed, the power of immediately and largely increasing it must always be kept in reserve. If a fleet of transports is to move at a rate of 15 knots, each must be considerably more than a 15-knot ship. The necessary number of steamers with the speed required could not be provided by the French mercantile marine, and hardly by that of the British Empire.

Though it has been suggested that the 20,000 infantry and 3,000 cavalry above mentioned, with the necessary artillery, could be spared from French Africa alone, yet to the mobilization of this force eight days are assigned; and the collection at Bizerta of the requisite transport would occupy some time, and could not be conducted in secret. It now appears to be accepted that 35,000 to 40,000 men suitably equipped are the smallest force likely to be employed, and that 60,000 would be a probable figure. For such an expedition the troops would have to be brought specially from France. In other words, the expedition would make two voyages instead of one; and, if a descent on Cagliari were intended, would proceed to a more distant point than its objective, which, in fact, it would pass on the way. Strategy such as this can hardly be expected to prove formidable.

If a military expedition is to be sent against the Italian territory, Toulon would certainly be the more convenient point from which to start. Supplies, and the means of conveying them, would abound, and the resources in shipping possessed by Marseilles would be within easy reach. The distance to be first traversed by the expedition may be larger, but not sufficiently so to prevent a single voyage from being greatly preferable to two. The troops, &c., would have to be collected once, and not twice as would be the case if Bizerta were used; and the difficult work of keeping open an additional line of sea communications would be unnecessary. It is true that the French will not attempt to take a fleet of transports through the Straits of Bonifacio in the face of the Italian ships and torpedo-boats at Maddalena. It is also unlikely that they will move any large body of troops by sea until the Italian fleet is disposed of, in which case the point of departure and route may be selected almost at pleasure, so that they need not encounter the additional inconveniences of going first to Bizerta merely to start from it again.

As the starting-point for the French fleet sent on a purely naval expedition, Toulon would undoubtedly be more formidable to Italy. Issuing from that port a concentrated French fleet would be superior to that of Italy, and might compel it to keep in port. If part of the French fleet is to operate from Bizerta, and only the rest from Toulon, the Italian navy ought to be superior to either division by itself.

As regards a sudden descent on Malta with a force of moderate size, Bizerta is not more advantageously situated than Tunis; and it does not appear to have been proposed to restrain the French from providing for small concentrations of troops at every point in the Regency.

There is one particular in which the conversion of Bizerta into a naval port may be of some advantage to France in time of war. It will give the French one more port from which cruisers and small craft may issue to molest the trade on the Gibraltar-Malta route. They have, however, already several ports in the neighbourhood which can be used for the purpose, and the possession of one more or less could not materially affect their power of injuring our trade. Moreover, Bizerta will be nearer than any Algerian port to Malta, from which we could conveniently send ships to mask it. So that a few more British cruisers in the Mediterranean would fairly meet the case.

The form which Bizerta must assume when made into a naval port will have marked tactical defects. It must be entered and left by a long and narrow channel.* The channel must be dredged or excavated far out to sea. It seems hardly possible to establish defences which will secure the outer end of such a channel at night; and, even if of the width alleged, its blocking, if only for a time, will not be difficult.

A convenient commercial port at Bizerta, entry to which would be free, or but slightly hampered by pecuniary demands in the shape of dues, might be a formidable rival to Malta, where it is yearly becoming more and more difficult to find berthing-space. But the construction of such a port would require large sums, and without high dues it is not easy to see how even the interest on the money could be provided. Supposing this difficulty to be surmounted, the net result would be a diminution of the crowding in the Malta harbours, which, to whatever extent it may check the further commercial development of Valetta, would certainly have many advantages in a purely naval direction.

The foregoing considerations should make it plain that, even if the French do create a strong naval port at Bizerta, Italy will not be seriously threatened, the position of England in the Mediterranean will not be considerably affected, and the conditions of a war in that sea will not be changed to the benefit of France.

* Even if 218 yards wide, two ships could not be certain of being able to pass through it abreast.

The naval interests of other Powers would gain were France to carry out the designs attributed to her. It may be going too far to say that the more money which that country spends on Bizerta the less she will spend on her ships; but it is quite certain that the money which is spent on the place will not be available for the fleet, and everything that will check the increase of the French fleet will tell in favour of other Naval Powers. It is desirable to lose no opportunity of strengthening the British naval position in the Mediterranean, and, as a means towards this, advantage should be taken of every mistake made by France. With this object in view our policy should be to encourage the French to persevere in their misdirected efforts in connection with Bizerta. This desirable end may perhaps be secured by abstaining from putting so much pressure on them as to make them abandon their design, and by expressing just that judicious amount of apprehension which will make them obstinately persist in carrying it out in the belief that they are doing something damaging to the naval position of their future probable enemies.

(Signed) CYPRIAN A. G. BRIDGE.

January 25, 1891.

I have not had time to go into the question. As to the principle laid down I concur, reserving opinion on detail.

R. V. H.

January 27, 1891.

NOTE.—There is evidence to show that the French, if suitably encouraged, will very likely fall into the error of expending money, time, and attention on fixed establishments of doubtful value, instead of on their mobile fleet. Up to the autumn of 1889 they had expended on the construction and armament of the defensive barrier on their eastern frontier 135,000,000*l.*, whilst for the completion and improvement of the works large sums had still to be voted. Perhaps 150,000,000*l.* would not be too high to put the total. It is understood that the first line will be fully and immediately garrisoned directly war is declared. For this purpose 250,000 men will be necessary, and that number will be "immobilisé" on the eastern frontier alone. Had only 50,000,000*l.* been sunk in passive defences requiring not more than 100,000 men as garrisons, there would remain 150,000 men to add to the field army, and the interest on 100,000,000*l.*, say 4,000,000*l.* a-year, towards their maintenance. The interest on the money necessary to make a high class naval port at Bizerta, if spent on the fleet, would probably make the French navy menacingly formidable to England, and much more so to Italy.

No. 13.

The Marquis of Salisbury to the Marquis of Dufferin.

(No. 26.)
My Lord,

Foreign Office, January 30, 1891.

ON more than one occasion the Italian Ambassador has spoken to me with great earnestness upon the subject of the port of Bizerta, and the projects which the French are supposed to entertain with regard to it. Signor Crispi has also addressed your Excellency upon the same point; and I hear from both the German and Austrian Ambassadors that the disquietude of the Italian Government upon this subject is very great, and that it is increased by what they consider to be the apathy of Her Majesty's Government in the matter. I think it is, therefore, desirable to explain to your Excellency more fully the views which we take in regard to this question, and the grounds upon which we have hitherto abstained from any formal representations to the French Government about it.

From the first moment of the French Protectorate considerable anxiety was felt in this country as to the course which the French Government would pursue in dealing with the port of Bizerta, which for the first time came into their hands by that arrangement; and it was the subject of representations from Lord Granville, then Her Majesty's Secretary of State, and from Lord Lyons. The replies of M. Barthélemy St. Hilaire are on record, but it cannot be said that the language in which they are couched imposes any effective restriction upon the future conduct of the French Government. It will be sufficient to quote the actual words addressed by him to Lord Lyons in a note. They are confirmed by the records we have of conversations which passed at

that time, and are of course of a more binding character than any record of spoken words could be:—

"Votre Excellence me rappelle qu'en plusieurs occasions, dans mes entretiens avec elle, j'ai repoussé l'idée d'une conquête ou d'une annexion à la France d'une partie quelconque du territoire Tunisien. Je ne fais aucune difficulté de vous répéter ici ce que je vous ai dit déjà, et je puis vous affirmer que nos arrangements avec le Bey ne comprennent aucune stipulation qui ne soit conforme aux assurances que je vous ai données. Je réponds implicitement ainsi, et d'une manière qui, j'aime à le croire, vous paraîtra concluante, à vos observations concernant le port de Bizerte. Nous n'avons pas plus le désir de nous annexer Bizerte que tout autre point de la Tunisie. Sans doute, comme je vous l'ai spontanément indiqué, il est possible que nous soyons amenés à favoriser le développement commercial de ce port, et à encourager les tentatives qui seraient faites dans l'intérêt même de la Régence pour en améliorer les conditions matérielles. Mais quelles que soient les entreprises que des Sociétés privées veuillent tenter à Bizerte, il n'entre nullement dans nos projets de dépenser aujourd'hui les sommes énormes et de commencer les travaux gigantesques qui seraient nécessaires pour transformer cette position en un port militaire pouvant servir de base à des opérations de guerre maritime."

These sentences are conclusive as to the intention of the French Government, at that time, to confine their action, if they took any, to the creation of a commercial port, and to abstain from all fortification of Bizerta. But the insertion of the word "aujourd'hui" precludes us from treating this expression of an intention as a stipulation permanently binding; and the ten years that have since elapsed are sufficient to relieve the French Government of any imputation of insincerity, so far as the language of M. St. Hilaire is concerned, if they were now to commence the fortification of the port. They have repeated more than once, since that time, that they had no present intention of fortifying it. Only the other day I mentioned to M. Waddington the uneasiness which was felt by the Italian Government and by many persons in this country upon the subject, and expressed my earnest hope that nothing would be done by the French Government which would confer a military character upon the harbour that was being made. M. Waddington replied that the action of the French Government was confined to the facilities which it had given to a Company, whose programme and objects were published to the world; and that they had no intention of spending their money upon fortifications at Bizerta. But this reply, like many that have gone before, though conclusive for the present, gives no guarantee whatever with regard to the action of the French Government in the future.

If this view be correct, it follows that the English Government have no conventional ground upon which they could take objection to the fortification of Bizerta by the Bey of Tunis, under French suggestion, and by French assistance. They may, of course, assert their right derived, not from Treaties, but from the larger prescriptions of the right of self defence, to take objection to any measure which should violently change the balance of naval power in the Mediterranean. This step, however, would be one of great gravity, and could only be justified by circumstances of an exceptional character. Except when authorized by some Treaty or some engagement, States do not in practice conceive themselves to be authorized to take objection to the action of other States in fortifying their harbours, however menacing those harbours may be to their own position. England has never taken objection to the vast expenditure which has been devoted to Cherbourg, avowedly for the purpose of strengthening the French maritime power against us: nor has France ever taken objection to the fortifications at Alderney or at Portsmouth, which had obviously a corresponding intention; and it would be easy to find many other similar instances.

It is, perhaps, right to add, that the creation of a great naval fortress at Bizerta, would, in the judgment of some of our naval experts, do more injury to France, by dispersing her force, than the strategic advantages of the station itself would repay.

Apart, therefore, from exceptional considerations, which might dictate a course somewhat strange to the ordinary practice of nations, there seems to be no ground, either in the engagements that have been entered into, or in considerations derived from international law, which would justify Her Majesty's Government in entering a formal protest against the fortification of Bizerta. At the same time, the events that have taken place would entirely sustain them in seeking for explanations from the French Government upon the subject if any cause for doing so should seem to have arisen. The disclaimer of all intention to fortify which France has hitherto consistently expressed, gives us a ground for asking for full warning if the policy of France upon this point should change. We have a perfect right to demand that if France departs from the pacific and

reassuring professions which she has hitherto held out, she should give us an unambiguous notice of her changed attitude. We have a clear ground for asking her to explain her intentions if we see her enter upon any course of action which is inconsistent with what she has hitherto professed; but we cannot base such a demand for explanation upon rumour, or acts which are capable of an innocent interpretation.

This being the state of the case, let us see how the attitude of France at Bizerta actually stands.

She announced ten years ago that she should probably favour the commercial development of the port, and she has done so. A Company has been established which has agreed to construct the port for a sum of 360,000*l.* The paid-up capital of the Company was in last October only 80,000*l.* The only work which the Company was then constructing was a jetty to the north-west of the port, of which 400 metres were finished, and 800 metres remained to make. Another jetty, of apparently about half the same length, is to be constructed to the east of the port. There are therefore 1,400 metres more of jetty to make. At present it is being made at the rate of a metre a day, but the difficulty with constructions of this kind very much increases as the distance from the land is extended. Even at the present rate of construction, three or four years must elapse before the jetties will be complete; and unless the work differs very much from similar works in other parts of the world, it will not be completed without a considerable addition to the time and the cost originally contemplated by its projectors. When this work is done, a canal rather more than a kilometre in length, of 220 metres in width, is to be excavated, and the banks will be cased in stone; 10 metres will be the depth of water. The actual depth of soil removed must, of course, be considerably more. A certain amount of dredging will be necessary at both entrances of the canal in order to attain a uniform depth of 10 metres. Docks, lighthouses, and railways are projected in connection with the proposed entry.

There is nothing in all these projects which is inconsistent with the intention to restrict the development of the port to its commercial objects. But three grounds of suspicion have been advanced.

One is that the expense of the projected works is so far beyond the apparent means of the Company, or the probabilities of any remuneration from the traffic of Bizerta, that an intention to take the burden on the State for military purposes must have been intimated to the projectors.

The second is that the depth of 10 metres, equal to about 33 feet, is in excess of anything that can be required for a commercial vessel, and implies the intention to use the port for men-of-war.

The third is that the Beylical Government have given the ordinary notices of expropriation to the proprietors of certain ground lying on the western gate of Bizerta and on the road to Beja, on which it appears they have an intention of building barracks.

I do not at all deny that it is possible to infer warlike intentions from these indications. It is very likely that some counsellors of the French Government, who think it wise to be prepared for all eventualities, have advised that it is desirable so to shape the arrangements at Bizerta that they should be applicable to either use, and should be capable of being placed in a condition of defence. But the indications are slight. Commercial ships are now used which draw as much as 28 feet; there is no ground for believing that that limit must be permanent, and the tendency is rather towards larger than smaller vessels. The Tyne Commissioners state in their Report that they have, at enormous expense, increased the depth of the channel of the Tyne up to Newcastle from 21 feet, which was the depth at highest tide in 1860, to 40 feet, which is the depth now. But they certainly were not animated by any warlike intentions. Again, the tendency upon the whole of the Northern African coast is towards silting up. Every harbour along its length has been powerfully affected by this action. Both considerations combined may have induced the projectors to give to the depth of the channel and harbour a margin of 5 feet without their being necessarily led into that course by any considerations of a military character. Again, it is hardly safe, from the fact that an enterprise appears to be highly speculative, to infer that it is not sincerely undertaken. It merely assumes an optimism on the part of French projectors and French shareholders, which is certainly not without precedent in other quarters of the world. Again, the acquisition of land for the building of barracks hardly amounts to fortification. The troops by which the country is occupied must be lodged somewhere, and it is always cheaper to lodge them near the sea.

I have heard of no other allegations, outside mere hypothesis and rumour, which would justify the belief that the French Government at present contemplate the fortification of Bizerta. Such shadowy and ambiguous indications as those to which I have

referred do not, in our judgment, justify us in demanding an explanation from the French Government, or requiring it formally to state whether it has changed its policy or not. If that be so, any such communication would not only be useless, but unwise. It would not be met by a satisfactory, hardly perhaps by a respectful, answer. It might irritate the French Government into action which otherwise they might not care to take. It would diminish the force of any representations which we might be justified in making later on; and it would, if it became known, as would almost certainly be the case, betray a susceptibility on the part of the two Powers, which would lead the French people, at all events, to believe that the fortification of Bizerta was a policy by which great embarrassment could be caused, and great terror could be inspired in the counsels both of England and Italy. Such a conviction might lend to the policy an attraction in their eyes which it does not possess at present. While, therefore, I would by no means abate the vigilance with which we watch the conduct of the Tunisian authorities in respect to this naval station, I am distinctly of opinion that the time has not come when any advantage or any diplomatic security could be obtained by making a representation to the French Government on the subject.

You should show this despatch to Signor Crispi, and if he wishes it, give him a copy.

I am, &c.
(Signed) SALISBURY.

No. 14.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received February 2.)

(No. 4.)

My Lord,

Tunis, January 23, 1891.

A REPORT has reached the Italian Consul-General here, which he believes to be well-founded, that French troops have advanced from the military station at Tataon,* in small detachments of from thirty to forty men, to the villages of Wessen, Nalut, and Huemet, situated in Tripoli, about four days' march from Tataon. On the arrival of the troops they pitched their tents, and informed the inhabitants that they were on the limits of the Tunisian frontier.

The natives were considerably surprised by the arrival of the troops and the announcement of the Commander, for they have always paid tribute to the Vali of Tripoli as Ottoman subjects.

I beg to add that the French Maps published in Tunis do not define the frontiers, but a German Map in my possession marks the village of Wessen as being within the Tunisian frontier-line. The mountain called Djebel Nalut would appear to belong indisputably to Tripoli, but I am not yet aware whether the village of the same name is in the vicinity of the said mountain.

I have now written to Mr. Galea, Vice-Consul at Susa, an old resident, who is in constant communication with natives from those regions, and requested him to make private inquiries as to the alleged advance of French troops across the frontier, and to furnish me, if possible, with the names of tribes, villages, and landmarks which may have been hitherto acknowledged as forming the boundary-line between Tunis and Tripoli.

I hope that I shall be able thus to furnish your Lordship with a more trustworthy and detailed Report on the subject.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 15.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received February 2.)

(No. 5.)

My Lord,

Tunis, January 27, 1891.

I HAVE the honour to inform your Lordship that, according to a Report I have received from the Acting Consular Agent at Bizerta, Mr. Costa, the excavation of the new canal will be commenced next March.

* See despatches Nos. 75 and 76 of November 9 and 10, 1890.

The two dredgers intended for the works are of 130 and 100 horse-power respectively. They have been imported from Belgium, and are being mounted in the Port of Bizerta.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 16.

The Marquis of Salisbury to Sir W. White.

(No. 10.)
(Telegraphic.) P. Foreign Office, February 4, 1891, 7 P.M.

MY telegram No. 7 of 23rd January.

Have you informed the Porte that Her Majesty's Government concur in the representations which the German Ambassador at Constantinople made relative to the Tripoli frontier?

The German Embassy here states that no communication has been made to the Sultan or the Porte on the subject by the Italian Representative.

Does your information tally with this?

No. 17.

Sir W. White to the Marquis of Salisbury.—(Received February 5.)

(No. 8.)
(Telegraphic.) P. Constantinople, February 5, 1891.

WITH reference to the telegram No. 10 addressed to me by your Lordship yesterday on the subject of the Tripoli frontier, I have the honour to inform your Lordship that my Report thereupon, No. 38, is due at the Foreign Office to-morrow morning, having been dispatched by last messenger.

I have received assurances that no representations have been made here lately by Baron Blanc in the sense of those made by the Germans, but only that the Porte was informed some months ago by his Excellency that any disturbance of the *status quo* by the French would restore complete liberty of action to the Italians.

No. 18.

Foreign Office to Admiralty.

(Confidential.)
Sir, Foreign Office, February 5, 1891.

I AM directed by the Marquis of Salisbury to transmit to you herewith printed copies of a Report on Bizerta and the defensive works of the coast from Tunis to the Algerian frontier, which has been drawn up by Her Majesty's Consul at Tunis, and of the Maps and plans annexed to it,* together with a copy of a Memorandum on this Report which has been prepared in the Intelligence Division of the War Office.†

I am to request that you will lay these papers confidentially before the Lords Commissioners of the Admiralty, and take their opinion as to whether it would be desirable to have the Maps illustrating the Report, or any parts of them, reproduced on a reduced scale.

I am, &c.
(Signed) P. CURRIE.

No. 19.

Sir W. White to the Marquis of Salisbury.—(Received February 6.)

(No. 38.)
My Lord, Constantinople, January 30, 1891.

IN accordance with your Lordship's wishes, as expressed in the telegram of the 23rd instant, that I should follow the course adopted by my German colleague in making some observations to the Grand Vizier with regard to the alleged negotiations between

* Consul Drummond Hay, No. 69, October 28, 1890.

† No. 1.

France and Turkey on the subject of the rectification of the Tripolitan frontier, I have acted up to those instructions.

I beg to inclose the accompanying account given me by Sir Alfred Sandison of his conversation with the Grand Vizier on this subject, and of His Highness' statement to him.

I have, &c.
(Signed) W. A. WHITE.

Inclosure in No. 19.

Memorandum by Sir A. Sandison.

(Confidential.)

I HAVE the honour to report that I spoke yesterday to the Grand Vizier in the sense directed by your Excellency on the subject of the frontier question between Tripoli and Tunis.

His Highness, after stating that the Commission lately sent to Tripoli was purely connected with an internal affair, went on to say that the Sublime Porte had made a communication to the French Government to the effect that as there had been no question raised till now between the respective local authorities on either side of the frontier in reference to the limits or frontiers of the two provinces, the Imperial Government could not admit or entertain any representation or interference on the part of the Agents of the French Government in that quarter, inasmuch as the temporary occupation of Tunis still remained an open and unsettled question.

(Signed) A. SANDISON.

Pera, January 30, 1891.

No. 20.

Sir A. Paget to the Marquis of Salisbury.—(Received February 6.)

(No. 22. Confidential.)

My Lord,

Vienna, January 31, 1891.

HAVING, in a recent conversation with Count Kálnoky, referred to the Memorandum communicated to your Lordship by Count Tornielli respecting the dangers to be apprehended from the creation of Bizerta into a military port, his Excellency informed me that a similar communication had been made to him by Count Nigra, the Italian Ambassador at this Court, and that he had taken an opportunity of speaking to the French Ambassador upon the subject to which it referred.

His Excellency added that it was his intention to acquaint your Lordship, through Count Deym, with the substance of what he had said to M. Decrais; and I did not, therefore, press his Excellency for any precise information on the subject, but its general purport was, I understand, to the following effect, viz.: that although the French Government had always disclaimed the intention of creating a military port at Bizerta, it appeared from recent reports that works were being undertaken there which, if carried out, it would be difficult to reconcile with the purpose of establishing a purely commercial port only; that the creation of a military port there, capable of harbouring an enormous fleet composed of ships of the largest dimensions, would of course be a serious disturbance of the present balance of power in the Mediterranean, in the maintenance of which Austria-Hungary had a very great indirect, though, perhaps, not direct, interest, as she was also deeply concerned in preventing any question arising which might be calculated to produce an European complication; and his Excellency therefore requested the French Ambassador to draw the attention of his Government to the subject, by reporting to them the observations he had now made.

I believe that Count Kálnoky's principal object in speaking to the French Ambassador has been to tranquillize and give some kind of satisfaction to Signor Crispi. I gathered at least, from what his Excellency said to me, that he has great doubts whether it is really the intention of the French Government, at all events for the present, to give effect to the design attributed to them in the Italian Memorandum.

His Excellency asked me if I knew whether your Lordship had said anything to the French Government upon this subject, to which I replied that I was not aware.

I have, &c.
(Signed) A. PAGET.

The Marquis of Salisbury to Count Hatzfeldt.

M. l'Ambassadeur,

Foreign Office, February 9, 1891.

I HAVE the honour to inform your Excellency, with reference to my conversation with Count Metternich on the 23rd ultimo, that I have received a despatch from Her Majesty's Ambassador at Constantinople stating that he has supported his German colleague in the representations which the latter had made to the Sublime Porte with regard to the alleged negotiations between France and Turkey on the subject of the rectification of the Tripolitan frontier.

Sir W. White informs me, at the same time, that the Grand Vizier, in the course of an interview with the Dragoman of the British Embassy, stated that the Commission lately sent from Constantinople to Tripoli was connected with a purely internal affair, and that the Sublime Porte had made a communication to the French Government to the effect that, as there had been no question raised till now between the respective local authorities in reference to the limits or frontiers of the two provinces, the Imperial Government could not admit or entertain any representation or interference on the part of the Agents of the French Government in that quarter, inasmuch as the temporary occupation of Tunis still remained an open and unsettled question.

I have, &c.
(Signed) SALISBURY.

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 10, 1891.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list, which relate to an application received by Mr. Drummond Hay, Her Majesty's Consul at Tunis, from General Ben Ayad, an insolvent British-protected person, who seeks his intervention, under Article VIII of the Convention of 1863 between the Governments of Great Britain and Tunis, against the action of the French Tribunals, by whose order his immovable property in that city is being sold, and requests Mr. Hay to undertake the liquidation of his pecuniary affairs (see Inclosure 1 in No. 77).

It is contended on behalf of this application (see Inclosure 2 in No. 77) that the privileges accorded to the British Consul under the above-mentioned Article were not affected by the Order in Council of the 31st December, 1883, whereby British Consular jurisdiction became vested in the French Tribunals, on the ground, apparently, that the Order in Council of 1883 applies only to such matters as are included in Articles XXIV and XXV of the Convention of 1875 between the aforesaid two Governments, and that the jurisdiction exercisable by the Consular Court for Tunis under Article 9 of the Ottoman (Tunis) Order in Council of 1881 and Article VIII of the Convention of 1863, in regard to the immovable property of a British subject insolvent, is not one of the matters so included.

This contention, however, appears to be open to serious question, and, before acting upon it, Mr. Drummond Hay has requested to be furnished with instructions as to whether the jurisdiction in question was transferred to the French Tribunals by the Order in Council of the 31st December, 1883, or not.

It will be seen that the latter part of Article 9 of the Order in Council of 1881 specifically provides that "all jurisdiction, powers, and authorities exercisable on Her Majesty's behalf by any Consular officer of Her Majesty, or other British authority (under Article VIII of the Convention of 1863), shall be exercised by the [British Consular] Court for Tunis and the Supreme Court, according to their respective jurisdiction and authority, and not by any other Consular or other authority on behalf of Her Majesty;" and the case, as one involving the immovable property of a British-protected person who is insolvent, would therefore appear, at any rate, to come within the provisions of the above-quoted Article.

On the 5th May, 1883, a Decree of the Bey of Tunis (see Parliamentary Paper "Tunis No. 1, 1884," p. 17) was published declaring that the subjects of foreign Powers, whose Consular Courts in the Regency were abolished by the establishment of

French jurisdiction in Tunis, should be justiciable by the French Tribunals under the same conditions as French subjects.

In the same year an arrangement was concluded between the Governments of Great Britain and France (see Parliamentary Paper "Tunis No. 1, 1884," pp. 11, 24, 26, 28, 30, and 32) whereby Her Majesty consented to cede her Consular jurisdiction in the Regency on the above-quoted understanding.

The Order in Council of the 31st December, 1883, which was thereupon issued, provides that, "as regards all such matters and cases as come within the jurisdiction of the said French Tribunals, the operation of the Orders in Council regulating Her Majesty's Consular jurisdiction in Tunis shall cease to be in force and operation within the Regency on and after the 1st day of January, 1884."

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion upon the particular question submitted in Mr. Drummond Hay's despatch, together with any further observations which you may desire to offer on the case generally.

I have, &c.
(Signed) P. CURRIE.

List of Papers sent to the Law Officers, February 10, 1891.

(A.) Consul Drummond Hay	..	..	No. 7)	November 15, 1890.
(B.) Convention between Great Britain and Tunis	..	..	..	October 10, 1863.
(C.) Order in Council	..	..	..	December 31, 1883.
(D.) General Convention between Great Britain and Tunis	..	..	..	July 19, 1875.
(E.) Order in Council	..	..	..	May 18, 1881.
(F.) Decree of the Bey of Tunis	..	..	..	May 5, 1883.
(Page 17 "Tunis No. 1, 1884.")				
(G.) Correspondence respecting arrangement between Great Britain and France, 1883.	..			
(Pages 11, 24, 26, 28, 30, and 32 "Tunis No. 1, 1884.")				

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received February 12.)

(No. 6.)

My Lord,

Tunis, February 1, 1891.

I HAVE the honour to inform your Lordship that the military authorities at Bizerta have entered into negotiations with the Honourable Terence Bourke for the purchase of 15,000 square metres of land, situated on his property in the neighbourhood of the port, for the formation of a military zone on the eastern side of the canal.

The property in question is called Benagro, and comprises two heights commanding the canal and the sea, one of which is called Menzel-el-Djemil, referred to in my despatch No. 69 of the 28th October, 1890.

I have also heard from a private correspondent in Algeria that five siege cannons, intended for Bizerta, were lately landed at Bône by a French war-vessel which had been observed veering about for ten days.

My informant adds that the said vessel had been watched by a British man-of-war.

This information strengthens the rumours reported to your Lordship in despatch No. 88 of the 23rd December last, that eight guns of large calibre were expected by the military authorities of Bizerta from France for the defence of the port.

I have, &c.
(Signed) R. DRUMMOND HAY.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received February 12.)

(No. 7.)

My Lord,

Tunis, February 5, 1891.

I HAVE the honour to inform your Lordship that M. Massicault embarked yesterday for Marseilles, leaving M. E. Régnault, the French Consul, in charge of the Residency.

It is reported that the object of M. Massicault's journey is to submit to the Minister for Foreign Affairs in Paris the proposals for reforms in the Regency adopted by the French Colonial Council at their conferences held on the 23rd, 27th, 28th, and 29th ultimo.

The deliberations of the Council have not been published by either of the official journals in Tunis, but an account of the meetings has appeared in the "Tunisie" of the 1st instant, a newspaper edited by one of the members who took a leading part in the discussions. According to the report of that journal, the first meeting took place on the 23rd January, under the presidency of the Resident-General, when three Committees were elected from amongst the members to represent finances, public works, and administration.

The meetings held during the three days ending the 29th January were devoted to the discussion of the proposed reforms and improvements, when the following Resolutions, besides a few others of minor importance, were carried by large majorities of votes:—

1. The construction of three railroads, from Tunis to Bizerta, to Susa, and to Kairwan.

2. Improvements of the ports of Susa and Sfax.

3. Agricultural reforms.

4. Reforms in the local taxes.

5. Water supplies for Susa and other towns.

6. Encouragement of French labour in the Regency.

7. Creation of a Court of Appeal in Tunis.

8. Competence of the French Tribunals in questions relating to real property.

9. Election by universal suffrage of the French Colonial Council in Tunisia.

I refrain from commenting, or reporting more fully to your Lordship, on the decisions of the Council until I can derive my information from a more reliable source than the "Tunisie" newspaper.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 25.

The Marquis of Salisbury to the Marquis of Dufferin.

(No. 39.)

My Lord,

Foreign Office, February 12, 1891.

THE Italian Ambassador called on me yesterday and stated that reports had reached the Italian Government that the garrison of Gabes, in Tunis, had lately been raised to the number of 3,000 men. The greater part of the reinforcements had reached Gabes by sea, and had not been drawn from Algeria. The Italian Government had also, Count Tornielli informed me, learnt that French patrols from Ued Tatan had penetrated into Tripoli as far as the villages of Uezen, Nelut, and El Huamet, five days march from the frontier. Those patrols had, his Excellency said, camped in the districts named, and had informed the inhabitants that they belonged to Tunis, though hitherto the villages in question had paid tribute to the Ottoman Government, and held relations only with Tripoli.

I have requested Her Majesty's Ambassador at Constantinople, by telegraph, to ascertain whether the Porte has received any information similar to that communicated to me by the Italian Government.

I am, &c.
(Signed) SALISBURY.

No. 26.

The Marquis of Salisbury to Sir W. White.

(No. 11.)

(Telegraphic.) P.

Foreign Office, February 13, 1891.

THE Italian Ambassador called on me yesterday, and stated that reports had reached the Italian Government that the garrison of Gabes in Tunis had lately been raised to the number of 3,000 men. The greater part of the reinforcements had reached Gabes by sea, and had not formed part of the troops in Algeria. The Italian Government had

also learnt that French patrols from Ued Tatan had penetrated into Tripoli as far as the villages of Uezen, Nelut, and El Huanut, five days march from the frontier. Those patrols had camped in the districts named, and had informed the inhabitants that they belonged to Tunis. Hitherto, the villages in question had paid tribute to the Ottoman Government, and held relations only with Tripoli.

I should be glad to know whether the Porte has any information to the same effect as that received by the Italian Government.

No. 27.

Sir W. White to the Marquis of Salisbury.—(Received February 14.)

(No. 9.)

(Telegraphic.) P.

Constantinople, February 14, 1891.

WITH reference to your Lordship's telegram No. 11 of the 13th instant on the subject of the Tripoli frontier, I am assured by the Grand Vizier that he has no information of the French garrison at Gabes having been increased, nor of the advance of the French, but his Highness admits that he has quite recently received intelligence from the Governor of Tripoli, to the effect that the French frontier authorities had intimated to certain Nomad tribes in the direction of Gebel-Nelut that they would no longer be allowed to remain in that district unless their neighbours, i.e., the French in Tunis, consent thereto.

By this version the incident is minimized, and if these villages or Nomad tribes once recognize French sovereignty the territory of Tunis will be increased, and the French may thus obtain the road which they desire so warmly in that direction.

No. 28.

The Marquis of Dufferin to the Marquis of Salisbury.—(Received February 24.)

(No. 31.)

My Lord,

Rome, February 18, 1891.

IN compliance with your instructions, I have allowed the Italian Foreign Minister to peruse your Lordship's despatch No. 26 of the 30th ultimo in reference to Bizerta.

From what fell from his Excellency, I do not think it is a question to which he has as yet given very much attention, but he seemed to share what undoubtedly is the prevailing idea in Government and in military circles in Italy, that the erection of Bizerta into a first-class military port and arsenal would prove prejudicial to the interests of Italy.

I have, &c.
(Signed) DUFFERIN AND AVA.

No. 29.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received February 25.)

(No. 8. Confidential.)

My Lord,

Tunis, February 17, 1891.

I HAVE been informed by M. Machiavelli, the Italian Consul-General, that his Consular Agent at Gabes has reported the arrival at that port of a M. Cornes on his way to Ghadamés. He is believed to be a captain in the French Engineers, although he passes himself off as a Swiss subject travelling on his private account.

It is also stated that reinforcements of 800 men have been lately forwarded from Gabes to the Tripoli frontiers, and that arrangements are being made by the military authorities for the eventual transport of a large body of troops across the frontiers.

The French military stations of Tongurt and Warghla in Algeria are reported to be strongly garrisoned.

I beg that your Lordship will not rely upon this news until I am in a position to furnish confirmatory reports from the British Consular officers who have been instructed to watch events, and to keep me fully informed.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 30.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 26.)

My Lord,

Royal Courts of Justice, February 24, 1891.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to an application received by Mr. Drummond Hay, Her Majesty's Consul at Tunis, from General Ben Ayad, an insolvent British-protected person, who sought his intervention, under Article VIII of the Convention of 1863 between the Governments of Great Britain and Tunis, against the action of the French Tribunals, by whose order his immovable property in that city was being sold, and requested Mr. Hay to undertake the liquidation of his pecuniary affairs.

That it was contended on behalf of that application that the privileges accorded to the British Consul under the above-mentioned Article were not affected by the Order in Council of the 31st December, 1883, whereby British Consular jurisdiction became vested in the French Tribunals, on the ground, apparently, that the Order in Council of 1883 applies only to such matters as are included in Articles XXIV and XXV of the Convention of 1875 between the aforesaid two Governments, and that the jurisdiction exercisable by the Consular Court for Tunis under Article 9 of the Ottoman (Tunis) Order in Council of 1881, and Article VIII of the Convention of 1863, in regard to the immovable property of a British subject insolvent, was not one of the matters so included.

That that contention, however, appeared to be open to serious question; and that, before acting upon it, Mr. D. Hay had requested to be furnished with instructions as to whether the jurisdiction in question was transferred to the French Tribunals by the Order in Council of the 31st December, 1883.

That it would be seen that the latter part of Article 9 of the Order in Council of 1881 specifically provides that "all jurisdiction, powers, and authorities exercisable, on Her Majesty's behalf, by any Consular officer of Her Majesty, or other British authority (under Article VIII of the Convention of 1863), shall be exercised by the [British Consular] Court for Tunis, and the Supreme Court, according to their respective jurisdiction and authority, and not by any other Consular, or other, authority, on behalf of Her Majesty;" and that the case, as one involving the immovable property of a British-protected person who was insolvent, would therefore appear, at any rate, to come within the provisions of the above-quoted Article.

That on the 5th May, 1883, a Decree of the Bey of Tunis (see Parliamentary Paper "Tunis No. 1, 1884," p. 17) was published, declaring that the subjects of foreign Powers, whose Consular Courts in the Regency were abolished by the establishment of French jurisdiction in Tunis, should be justiciable by the French Tribunals under the same conditions as French subjects.

That in the same year an arrangement was concluded between the Governments of Great Britain and France (see Parliamentary Paper "Tunis No. 1, 1884," pp. 11, 24, 26, 28, 30, and 32), whereby Her Majesty consented to cede her Consular jurisdiction in the Regency on the above-quoted understanding.

That the Order in Council of the 31st December, 1883, which was thereupon issued, provides that "as regards all such matters and cases as come within the jurisdiction of the said French Tribunals, the operation of the Orders in Council regulating Her Majesty's Consular jurisdiction in Tunis shall cease to be in force and operative within the Regency on and after the 1st day of January, 1884."

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion upon the particular question submitted in Mr. Drummond Hay's despatch,

together with any further observations which we might desire to offer on the case generally.

In obedience to your Lordship's commands we have the honour to

Report—

That, in our opinion, there is now no jurisdiction vested in the British Consular Court for Tunis in respect of the liquidation of the pecuniary affairs of an insolvent British subject.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Consul R. Drummond Hay	(No. 77. Political)	November 15, 1890.
(B.) Convention between Great Britain and Tunis	.. ..	October 10, 1863.
(C.) Order in Council	.. ..	December 31, 1883.
(D.) General Convention between Great Britain and Tunis	.. ..	July 19, 1875.
(E.) Order in Council	.. ..	May 18, 1881.
(F.) Decree of Bey of Tunis ("Tunis No. 1, 1884," p. 17)	.. ..	May 5, 1883.
(G.) Correspondence respecting arrangement between Great Britain and France, 1883 ("Tunis No. 1, 1884," pp. 11, 24, 26, 28, 30, and 32).		

No. 31.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received March 2.)

(No. 9.)

My Lord,

Tunis, February 25, 1891.

WITH reference to my despatch No. 4 of the 23rd ultimo, I have the honour to inform your Lordship that I have received a letter from Vice-Consul Galea reporting that a squadron of Spahis was sent from Gabes on the 11th instant to the military station of Kasba Metammer, and that the news which had reached me of the dispatch to the Tripoli frontiers of reinforcements in small detachments from time to time is correct.

With regard to the alleged encroachments of French troops on the Tripoli frontiers, Mr. Galea adds that the military authorities are endeavouring to secure, by pacific means, the submission of the inhabitants of Edhiba and Wessin to the Beylical Government, with the view of putting an end to the disputes that are of frequent occurrence respecting the rights of pasturage on the border lands. He fears, however, that the late visit of three Tunisian Spahis to these villages may have caused considerable excitement amongst the frontier tribes, as both Edhiba and Wessin are undoubtedly situated on Tripoli territory.

The attention of the military authorities has also been drawn lately to the southern frontiers of the Regency, where the Tuareg tribes have assumed a threatening attitude, and are reported to be advancing with 100 tents to make raids on Tunisian territory. The Sheikhs of Beniyyed, Matmata, and Tamazrat have been warned of their approach, and ordered to hold themselves in readiness in case of an attack.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 32.

Foreign Office to Consul R. Drummond Hay.

(No. 2.)

Sir,

Foreign Office, March 3, 1891.

LORD SALISBURY has referred to the Law Officers of the Crown your despatch No. 77 of the 15th November last, respecting the application of General Ben Ayad (an insolvent British-protected person) for your intervention against the action of the French Tribunals in the matter of the sale of his immovable property in Tunis; and I am

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directed by his Lordship to state to you, for your information and guidance, that he is advised that there is now no jurisdiction vested in the British Consular Court for Tunis in respect of the liquidation of the pecuniary affairs of an insolvent British subject.

I am, &c.
(Signed) P. CURRIE.

No. 33.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received March 20.)

(No. 11.)
My Lord,

Tunis, March 14, 1891.

THE British subjects who memorialized your Lordship with regard to the municipal taxes, and the administration of justice, &c., in the Regency since the establishment of the French Protectorate, have applied to me for an answer to the letter they addressed to your Lordship on the 27th December, 1889. I have therefore the honour to request that I may be informed whether I am authorized to communicate to them the substance of the reply I received from your Lordship in despatch No. 17 of the 1st December, 1890.

I beg to mention that the case of Mr. Ellul, disposed of in your Lordship's despatch No. 14 of the 2nd August, 1889, referred to an alleged violation of domicile by the Tunisian authorities.

In the present instance Mr. Ellul merely furnished the memorialists with proofs in his possession of administrative irregularities.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 34.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received March 20.)

(No. 12.)
My Lord,

Tunis, March 14, 1891.

I HAVE the honour to transmit to your Lordship herewith an extract from the Paris telegrams of the "Dépêche Tunisienne" of the 13th instant, relating to a proposed understanding between France, Italy, and Turkey on the subject of Tunis and Tripoli.

I have, &c.
(Signed) R. DRUMMOND HAY.

Inclosure in No. 34.

Extract from "La Dépêche Tunisienne" of March 13, 1891.

TUNISIE ET TRIPOLITAINE.

Paris, le 12 Mars, 7 heures soir.

UNE dépêche adressée de Rome au "Gaulois" annonce qu'il se préparerait un projet d'entente entre la France, l'Italie, et la Turquie, au sujet de la Tripolitaine.

Réserves faites des questions de détail, le Cabinet de Rome reconnaît le Protectorat de la France sur la Tunisie, avec possibilité d'annexion à la mort du Bey actuel.

D'autre part, la France reconnaît à l'Italie la priorité du droit d'intervenir ultérieurement en Tripolitaine, avec l'assentiment préalable de la Turquie, à qui le Cabinet de Rome offrirait des compensations.

No. 35.

Foreign Office to Consul R. Drummond Hay.

(No. 4.)
Sir,

Foreign Office, March 25, 1891.

IN reply to your despatch No. 11 of the 14th instant, I am directed by the Marquis of Salisbury to inform you that you are authorized to communicate the substance of my despatch No. 17 of the 1st December to the British subjects in Tunis who, on the 28th May last, signed a Petition to his Lordship protesting against certain municipal taxes, and against the administration of justice in that Regency since the establishment there of a French Protectorate.

I am, &c.
(Signed) P. CURRIE.

No. 36.

The Marquis of Salisbury to the Marquis of Dufferin.

(No. 78. Confidential.)

My Lord,

Foreign Office, April 16, 1891.

THE Italian Ambassador called at the Foreign Office on the 10th instant, to speak about the Tripoli frontier. His Excellency said that the Austrian Ambassador at Constantinople had suggested that a Commission should be appointed to settle it, but that the Sultan had refused this on the ground that it would imply a recognition of French rights in Tunis.

The German Ambassador had then made a suggestion to His Majesty that in order to prevent further encroachments on Tripoli, the frontier villages of that province should be occupied by detachments of Ottoman troops. This suggestion had been supported by the Italian and Austrian Representatives, and Count Tornielli was instructed to ask that Her Majesty's Ambassador should be authorized to do the same.

I have accordingly instructed Sir W. White to support the recommendation made by his colleagues.

I am, &c.
(Signed) SALISBURY.

No. 37.

The Marquis of Salisbury to Sir W. White.

(No. 25.)

(Telegraphic.) P.

Foreign Office, April 16, 1891.

IN accordance with the request of the Italian Ambassador here, you are authorized to join your Austrian and Italian colleagues in supporting the suggestion made to the Sultan by M. de Radowitz that the villages on the Tripoli frontier should be occupied by detachments of Ottoman troops, with a view to prevent further encroachments.

No. 38.

Sir W. White to the Marquis of Salisbury.—(Received April 17.)

(No. 135.)
My Lord,

Constantinople, April 6, 1891.

I HAVE the honour to inclose copies of Mr. Consul-General Moore's despatches of the 9th and 28th ultimo, in the event of such copies not having been sent direct to your Lordship.

Your Lordship will observe that Mr. Moore, in his despatch of the 28th ultimo, points out the contradiction between the information furnished to him by the Governor-General and the statements of the Marquis di Rudini in the Italian Chamber on the subject of French encroachments on the frontier of Tripoli.

I have, &c.
(Signed) W. A. WHITE.

Inclosure 1 in No. 38.

Consul-General Moore to Sir W. White.

Sir, Tripoli, March 9, 1891.
I HAVE the honour to report to your Excellency that I recently saw the Governor-General, and found with him Osman Pasha, the Military Commandant. Having asked his Excellency what news he had from the frontier, he replied that Osman Pasha could answer that question. The latter said that he had just received a report from the officer in command of the military post nearest the frontier stating that all was perfectly quiet and normal there, and the inhabitants pursuing their pastoral avocations without interference or molestation. The Vali, moreover, added that the late reports that French troops had crossed into Tripolitan territory, and intimated to the inhabitants that they were henceforth to consider themselves under Tunisian jurisdiction, and pay their taxes accordingly, were entirely unfounded; even, said he, in the lands claimed by the French as being within the Tunisian boundary no French soldiers are quartered, and there is only the local native rural police in French employ.

I have, &c.
(Signed) NOEL TEMPLE MOORE.

Inclosure 2 in No. 38.

Consul-General Moore to Sir W. White.

Sir, Tripoli, March 28, 1891.
IN my despatch of the 9th instant I reported the contradiction given by the Governor-General of Tripoli to the reports which had recently appeared of a transgression of the Tripoli frontier by French troops; at the time it seemed to me difficult to reconcile this contradiction with the apparently authentic statements referred to. I have since seen in the English papers that the Italian Minister for Foreign Affairs on the 4th instant confirmed the reports in question in the Italian Chamber of Deputies, adding that France had undertaken that such a thing should not recur.

I have had a further conversation with Ahmed Rassim Pasha on the subject, and mentioned this circumstance to him, but his Excellency persists in maintaining the falsity of the reports, notwithstanding the declarations of M. di Rudini.

Presuming that the Italian Minister was stating what he knew to be facts, the Governor-General either does not receive correct information from the frontier, or he chooses to conceal the truth from me. As I have no means of obtaining information of what is passing at the frontier, and must to a great extent rely for such on the Turkish authorities, important events may happen there of which I should not have timely knowledge; I beg leave, therefore, to submit the matter to your Excellency's appreciation.

I have, &c.
(Signed) NOEL TEMPLE MOORE.

No. 39.

Sir W. White to the Marquis of Salisbury.—(Received April 17.)

(No. 137.)

My Lord,

Constantinople, April 6, 1891.

I HAVE the honour to inclose copy of a despatch which I have received from Mr. Consul-General Moore on the subject of the proposed construction of a French military port at Bou-Grara, in the event of a copy of this despatch not having been sent direct to your Lordship.

I have, &c.
(Signed) W. A. WHITE.

Inclosure in No. 39.

Consul-General Moore to Sir W. White.

Sir, Tripoli, March 26, 1891.
I HAVE the honour to report that my Italian colleague recently called upon me and informed me that he had received information from a trustworthy correspondent at Gabes, on the Tunisian coast, to the effect that a French naval officer, Captain Savonet, had lately visited that district, and during a stay of some twenty days had made careful studies and surveys of the Lagoon of Bou-Grara, opposite the Island of Jerbah, with a view to the construction of a military port there. M. Grande said that the nature of the site was such as to offer facilities for the construction of a harbour at a minimum expenditure of labour and money, widening and deepening the lagoon being all that would be requisite.

M. Grande attaches great importance to this harbour from the fact that a French fleet assembled there could operate on this coast without fear of interception on its way from Malta or Spezzia.

I have, &c.
(Signed) NOEL TEMPLE MOORE.

No. 40.

Sir W. White to the Marquis of Salisbury.—(Received April 17.)

(No. 143. Confidential.)

My Lord,

Constantinople, April 10, 1891.

WITH reference to the ever recurring question of the allegations as to the French patrols advancing from Tunisian into Tripolitan territory, I have the honour to report as follows.

The Grand Vizier had told the Italian Chargé d'Affaires, Marquis Bisio, a couple of weeks ago, that the Porte intended sending orders to place Turkish sentries on the frontier so as to protect it from such incursions.

A few days later Marquis Bisio informed me that he thought that the Grand Vizier had shown since some hesitation in carrying out his above original intention, and that he imagined it would be necessary that Germany and some other Powers should press the Porte to exercise a better control over its Tripolitan frontier.

I told my Italian colleague that I could not do anything of the kind without positive instructions from your Lordship, and I now learn from M. de Radowitz that his Excellency is of opinion that the Grand Vizier had better be left alone to carry out his own views, which are by no means French ones on this point, and that it is quite superfluous to go on troubling his Highness.

I need hardly add that I agree perfectly in this with M. de Radowitz, and only hope that his Excellency has reported in that sense to Berlin.

I have, &c.
(Signed) W. A. WHITE.

No. 41.

Sir W. White to the Marquis of Salisbury.—(Received May 1.)

(No. 158. Confidential.)

My Lord,

Constantinople, April 22, 1891.

WITH reference to my despatch No. 143, Confidential, of the 10th instant, I have the honour to transmit herewith copy of a further despatch which I have received from Mr. Consul-General Moore, reporting the departure of the Special Commission sent by the Porte to investigate the native complaints against Ben Gadara, in which the Vali was implicated, and making further remarks on the conduct of the latter with regard to the Tripoli-Tunis frontier.

I have, &c.
(Signed) W. A. WHITE.

Inclosure in No. 41.

Consul-General Moore to Sir W. White.

Sir,

Tripoli, April 13, 1891.

I HAVE the honour to report that the Special Commission sent by the Porte to investigate the native complaints against Ben Gadara, in which the Vali was implicated, left Tripoli a few days ago on their return to Constantinople. Nearly two months, however, had elapsed since the termination of their inquiry into this matter, and there was much speculation as to what might be the motive of this prolonged sojourn. It was generally surmised that it had reference to the dispute with the French in regard to the boundary between this province and Tunis, but this question does not appear to have occupied the Commissioners, and it is not known what they have been doing in the interval.

Amongst the accusations made against the Vali by the complainants was one to the effect that he had connived at the encroachments of the French on the frontier.

In connection with the matter just mentioned, it is certain that, notwithstanding the denials of the Governor-General, French Spahis are still quartered on Tripolitan territory; that the tribesmen there have been ordered to pay taxes to them on pain of having their crops cut down; and that some of the Chiefs of these tribes have come here to lay the matter before the Vali, and ask him what they are to do in the strait in which they find themselves.

My Italian colleague informs me that he has lately seen the Governor-General, who admitted that such were the facts, and that he had reported the matter to the Porte, and could do no more.

I am informed that some years ago the Government distributed arms to the tribesmen of those parts, but a few months ago took back these arms from them.

The explanation of all this probably is, that Ahmed Rassim Pasha is acting in accordance with secret instructions from his Government, who might prefer to concede, in some roundabout way that would as much as possible save its prestige in the eyes of the people, such a strip of territory as the one in question, rather than quarrel with France about it.

I have, &c.

(Signed) NOEL TEMPLE MOORE.

No. 42.

Sir W. White to the Marquis of Salisbury.—(Received May 1.)

(No. 162. Confidential.)

My Lord,

Constantinople, April 24, 1891.

I HAD the honour to report to your Lordship in my despatch No. 143, Confidential, of the 10th instant, that I had agreed with M. de Radowitz that it was undesirable to press the Grand Vizier any farther at present on the subject of the frontier of Tripoli.

The instructions sent me by your Lordship by telegraph on the 16th instant (No. 25) on this very subject, at the request of Count Tornielli, had evidently been sent off before my above Report can have reached your Lordship.

Having seen the Grand Vizier since, I ascertained from His Highness that he had received the Sultan's Iradé authorizing the Sublime Porte to order (as he had suggested) the occupation by detachments of Ottoman troops, so as to prevent any further French encroachments in these parts, and that instructions had been sent accordingly.

His Highness admitted that these encroachments had the evident object not only of extending the Tunisian territory beyond its present limits, but also to cut off the "Hinterland" in a manner which would isolate and cut off Tripoli, and open up for the French the way into Africa.

After consultation with M. de Radowitz, we came to the conclusion that no farther action on our part was any longer necessary.

I shall, however, send instructions to Mr. Consul-General Moore to report to me, confidentially, whatever he may learn as to the way in which these precautionary measures determined upon by the Sultan are being carried out by the local authorities.

I have, &c.

(Signed) W. A. WHITE.

No. 43.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received May 18.)

(No. 18.)

My Lord,

Tunis, May 12, 1891.

I HAVE the honour to report to your Lordship the arrival at Bizerta on the 10th instant of General Dufaure de Bessol, commanding the 19th French Army Corps, and General Le Clerc, of the Tunisian Brigade, for the purpose, it is stated, of defining the military zone encircling the town.

The cutting of the new canal has now commenced, one dredger being already at work, to be followed shortly by two others.

I have, &c.

(Signed) R. DRUMMOND HAY.

No. 44.

Observations on the question of the construction of a Port at Bizerta.—(Communicated by Count Tornielli, May 28.)

(Translation.)

THERE is, in my opinion, good reason for the surprise expressed by his Excellency the Minister of Foreign Affairs on being informed of the conclusion at which, according to Lord Salisbury, the British Admiralty had arrived, in a very recent Report on the construction of a port at Bizerta, i.e., "that the French fleet would have to be divided between Toulon and the new base of operation, and that its offensive power would thus be diminished."

This theory, although emanating from a high military authority, is in evident contradiction with the strategical principle, which is obviously correct and has always been admitted to be true, that the greater (within certain limits, of course) the number of solid points of support, conveniently situated and properly prepared, which an army or a navy has at its disposal on the field of its operations, the greater the security and independence with which it can act.

It is evident that to have a base formed on a single point of support hampers and limits the freedom of movement (which is the essential characteristic of offensive warfare), as the danger of being separated from that point or of having your communications cut off by the enemy is much greater, and the consequences which may follow a defeat much more serious.

Supposing that the enemy is strong enough to engage in the conflict on an equal or scarcely inferior footing, the movements of the belligerent having a single point of support for a base must necessarily be more cautious and circumspect, and therefore less bold; and caution will become more and more necessary the further the operating force advances from its single point of support; this implies a real and positive diminution of offensive power.

To come to the concrete case of the French fleet in the Mediterranean, as long as that fleet has only the one great military port of Toulon there—in other words, as long as its base is in the Gulf of Lyons—it will evidently not be able to act against a hostile fleet of equal strength (or a portion against a superior fleet) with the same security and confidence in the Tyrrhenian Sea, the Sicilian Sea, the Ionian Sea, &c., as in the gulf itself.

A check in the Gulf of Lyons, where the port of refuge would be close at hand, could easily be repaired; in more distant seas it might become a disaster, if the enemy's fleet knew how to profit by its success.

How very different, and how much more advantageous, will be the position of the French fleet when Bizerta is transformed into a military port of the first rank.

On leaving Toulon of its own accord, or when cut off from it by the enemy's forces, that fleet will find at Bizerta, at the distance of about a day's voyage, another and almost equally strong point of support, considerably better situated for operations in that part of the western portion of the Mediterranean, and incomparably more conveniently placed for operations in the eastern half of that sea. It may even be said without exaggeration, with regard to the eastern part of the Mediterranean, that, by the construction of the port of Bizerta, Toulon will be brought to its entrance, while at present it is separated from it by the entire breadth of the western basin of the Mediterranean.

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If we look at the position of Bizerta with regard to the two great basins of which the Mediterranean is formed, situated as it is on the Sicilian Straits at the point of junction of the two basins, and about equally distant from the Straits of Gibraltar and the coast of Syria, it is evident that, from its geographical position alone, the port is admirably placed to serve as a base for the operations of a fleet in either the Eastern or Western Mediterranean; and the British Admiralty were quite right in stating, in their Memorandum to the Foreign Office, dated the 10th January, 1885, that Bizerta converted into a military port would be "the most important strategical position of the Mediterranean."

Toulon and Bizerta, then, are the two extreme and principal points of a broad and very solid base, which traverses and cuts into two almost equal parts the western basin of the Mediterranean—which has, at a convenient distance, for subsidiary points of provisioning and temporary support, the fortified ports of Villafranca, Ajaccio, and Bonifacio—and which could not be better adapted for favouring all the operations of the French fleet, offensive or defensive.

Depending on such a base, that fleet would be able, with the greatest ease and without risk, to shift the scene of its operations from the north to the south of the basin, relying, according to circumstances, more on the one or on the other of these two strong supports; it could with ease escape if pressed by the enemy, watch for a more favourable opportunity to attack him, withdraw to recruit its strength after a defeat, or follow up its advantage after a victory; in a word, it would have, in Bizerta, a base of operation which would give it in the Mediterranean the greatest solidity, security, and freedom of action, and would allow the French to attempt anything they pleased.

Nor is there any reason why, if Bizerta is converted into a great military port, the French naval forces should be divided between it and Toulon, for Bizerta will be provided with sufficient defences (for which it is admirably fitted by its hydrographical and topographical advantages) to be able to resist, not merely a *coup de main*, but a regular attack, without the direct and immediate assistance of a fleet being necessary.

Bizerta, then, will be the complement of Toulon, and, far from causing a division of the French fleet, will do much to favour its concentrated action. Instead of diminishing the offensive power of France, as the Admiralty maintain it will do, it will increase it, under a wise and enterprising leadership, to an enormous extent, and in any case will make it very much greater than it now is, as soon as the transformation of the great strategical position, which has at present only been begun, is completed.

If we apply the theory of the British Admiralty to the case of our own coast defences, we shall arrive at the conclusion, which I do not hesitate to qualify as absurd, that it would have been wiser for us to allow Spezia to remain the only point of support of our navy; Maddalena, which is considered so valuable, and Taranto would, on that hypothesis, be two mistakes, or, rather, two treasons to our system of national defence, since both of them would conspire to diminish the offensive power of our fleet, instead of jointly forming, as they do, a broad and satisfactory base of operation which gives the fleet a power, both for defensive and offensive purposes, very much greater than that which it would possess if Spezia were its only support and place of refuge.

According to the same theory, it would be a source of weakness to England to have on her coast the two great fortified ports of Plymouth and Portsmouth, not to mention other smaller but very strong points of defence, and to have in the Mediterranean Gibraltar, Malta, and Cyprus (the first two formidable from their fortifications), instead of having only one of those points of defence.

If we consider this theory in connection with what is stated in the Memorandum "Bizerte Port Militaire," we are forced to conclude that the Foreign Office is ceasing to take an interest in the Bizerta question, affecting, as it does, to hold the view that it does not possess the great importance attributed to it during the years immediately following on the French occupation of Tunis.

II.

In view of the attitude which Her Britannic Majesty's Government appear to wish to adopt in a question of such importance to all the Powers having territory on the Mediterranean, it may perhaps not be superfluous to add to what has been stated above certain other considerations, which will bring out more clearly the pre-eminent

position which Bizerta is undoubtedly destined to hold in the political and military system of the Mediterranean.

In the first place, then, it cannot be doubted that, of all the Powers on the shores of that sea, the one which will be most directly threatened by Bizerta, and which will suffer the greatest and most immediate damage by the establishment of the port, is Italy.

The able author of the Memorandum "Bizerte Port Militaire" has already clearly shown, by numerous telling and practical arguments, what dangers are being prepared for us by the creation of a second Toulon on the coast of ancient Carthage.

Bizerta will not only be a great military port and a powerful naval station, but, having behind it two vast provinces, Algiers and Tunis, rich in resources of every kind, and in which France can, undisturbed and in secret, prepare her forces and military material on a large scale, it will be in itself a strong and complete base of operation, from which, as is conclusively shown in the Memorandum above referred to, it will be possible to throw, suddenly and at the right moment, upon the coasts of our two larger islands and of the peninsula forces in such numbers that, in the present state of our military preparations, it will be almost impossible for us to resist them successfully.

And it is to be observed that from Bizerta attacks may be made not only on the coasts of the Sicilian and Tyrrhenian Seas, but also on those of the Ionian Sea and Adriatic, the shores of the two latter of which are safe from attacks from Toulon, or at any rate much less exposed to attacks of the French fleet advancing from that port.

In case of war, then, and so long as the French fleet is able to hold the sea or to return to it, a serious danger will always threaten our coasts, to guard against which we shall be obliged to take steps in time of peace to establish a new, more complete, and more solid system of defence for our southern provinces and islands, so that, even if we cannot entirely guard against the landing of the enemy, we may at least make such an operation more difficult and more hazardous. Such a system could not be established without very great efforts and pecuniary sacrifices.

But even if this work of defence were carried out, Bizerta would always remain a cause of weakness to us, in view of the superiority of the French army and navy, and the great length and vulnerability of our coast-line.

As things are at present, the French could not undertake a great landing operation on the Sicilian and Neapolitan coasts without having obtained a complete command of the sea, which they could not gain until they had completely disabled our fleet; this, it is to be hoped, would be no rapid or easy task for them. In any case such an operation would be more than a matter of hours or a few days, unless, indeed, circumstances were so extraordinarily favourable to the aggressor as to render useless all the precautions which human forethought could devise.

This relative security of our southern shores allows us to make the valley of the Po the centre of gravity of our defences, and to concentrate there the greater part of our forces within reach of the great continental theatres of war. Bizerta will put an end to this security, and will inevitably force us to create other centres of defence in the southern part of the peninsula and on the islands; we shall be compelled to send larger forces there and to take all those more ample measures which the imminence of the danger imposes upon us, if we do not wish to leave so great a portion of the national territory at the mercy of the first expedition of any strength which may approach us from Tunis.

The Italian land forces will thus be compelled to keep Europe and Africa simultaneously under observation, and to divide themselves between the different theatres of operations.

Only a considerable increase, which is impossible now and for many years to come, of our military strength, and especially of our navy, would be able to counter-balance the detriment we shall suffer from the carrying out of the project which is being matured on the coast of Tunis.

III.

The fact that our military power will undoubtedly be weakened by the establishment of a French port at Bizerta proves the great interest that our allies Germany and Austria-Hungary, and our probable ally England, have in opposing the project.

But, if Germany, being at a distance from the Mediterranean, can only have an indirect interest in the question, however great that interest may be, the interests of

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have been removed to higher spheres abroad, and that, with the exception of the Rev. Father Bernado, who was named Superior of the Capuchins in Tunis, but was recalled to Malta by his Chapter, they have not been replaced by any notable persons.

I may here take an opportunity of mentioning to your Lordship that the latter gentleman became a personal friend of mine during his short residence in Tunis, when he rendered useful services in matters connected with the Colony, and I have reason to believe that these facts had much to do with his removal from the country.

A Maltese prelate, Mgr. Bouhagiar, Bishop of Ruspe, who has great influence over his countrymen in the Regency, and who also treated me, during a visit to Tunis of some duration, with marked cordiality and deference, has been lately sent as Papal Envoy to Ecuador.

The contents of the Cardinal's Address have strengthened my belief that the suppression of the Franciscan mission has been brought about by his Eminence, with the connivance of prelates at the Vatican interested in the political schemes of France in these regions.

It is true that the Cardinal states that the monks will be replaced by "secular" priests of Italian and Maltese nationalities, but it stands to reason that such persons will be carefully selected to suit the aims of the Cardinal in North Africa.

My colleagues of Italy and Austria-Hungary have telegraphed to their respective Governments on this subject, and the latter has, I believe, urged that representations be made to the Pope on behalf of the Franciscan mission.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 48.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received June 29.)

(No. 26.)

My Lord,

Tunis, June 24, 1891.

WITH reference to my despatch No. 25 of the 16th instant, I have the honour to inform your Lordship that a deputation, consisting of Maltese, Italians, and Austrian subjects, left here on the 19th instant for Rome, to submit a Memorial to the Pope, signed by over 10,000 members of the Catholic community in Tunis, protesting against the suppression of the Capuchin Mission.

The Provincial of the Order, Father Bernardo, arrived the same day from Malta, to make the necessary arrangements for the departure of the Friars, and the cession of their property to the Cardinal, but, owing to the prevailing excitement, and the fears entertained of a violent demonstration, he prudently avoided entering Tunis, where crowds of Maltese and Italians were waiting him at the station. Father Bernardo has therefore remained at Goletta pending the receipt of further and more definite instructions from the Propaganda.

When the deputation was about to leave for Rome, Cardinal Lavigerie sent a lengthy telegram to one of the members, Count Raffo, of which I inclose a copy extracted from the "Dépêche Tunisienne" of the 21st instant, wherein his Eminence declares that his efforts have always been directed towards the retention of the Mission in the Regency, and attributes the gradual diminution of its members and the present crisis to the "deplorable and fatal system of persecution" adopted by the Italian Government against all religious Orders, and especially against the Mission of the Capuchins.

I believe, however, that neither this publication, nor the address already referred to in my despatch of the 16th instant, will have the effect of destroying the deep-rooted conviction of the public in Tunis that the Cardinal is mainly, if not solely, responsible for the suppression of the Mission; and that his Eminence has been guided in this matter, as in many others, by a desire, shared also by the French Administration, of enfeebling foreign influence in the Regency.

I have, &c.
(Signed) R. DRUMMOND HAY.

Inclosure in No. 48.

Extract from the "Dépêche Tunisienne" of June 21, 1891.

LETTRE DU CARDINAL LAVIGERIE.—Mgr. le Cardinal Lavigerie a adressé a M. le Comte Raffo la lettre suivante:—

"M. le Comte,

"J'ai lutté pendant quatre années contre les résolutions prises par les Supérieurs des Capucins d'enlever leurs religieux de la Tunisie parce que ceux-ci ne pouvaient plus suffire au service spirituel de leurs maisons de la Régence, soit pour le nombre, soit pour la difficulté de remplir les charges principales, et j'ai obtenu, depuis ce temps, par mes instances, de Sa Sainteté, qu'il fût défendu, même à un seul d'entre eux, de quitter la Régence.

"Mais la situation s'étant aggravée de telle sorte que le nombre des missionnaires Capucins Italiens se trouve aujourd'hui réduit à quatre pour toute l'étendue de la Régence, par suite des coups répétés subis par leur ordre en Italie, et, en particulier, de la destruction de leurs noviciats, et diverses combinaisons tentées pour les faire aider par les religieux Capucins d'autres provinces, et particulièrement de Malte, n'ayant pu réussir, j'ai dû, selon les règles de l'Eglise, mettre l'intérêt du peuple Chrétien au-dessus des intérêts de ces religieux et de la reconnaissance même que nous leur conservons toujours pour leurs services séculaires.

"C'est dans ces conditions que j'ai fait connaître à Rome que j'avais l'espérance fondée d'avoir désormais un nombre plus que suffisant de prêtres séculiers de leurs nations pour le service des Italiens et des Maltais, et que, par conséquent, je laissais les Capucins désormais libres d'accomplir leur projet. C'est sur cette assurance que les Supérieurs de l'Ordre des Capucins ont pris la résolution qui vous émeut en ce moment, mais que je ne peux considérer, avec les Supérieurs de Rome et le Saint-Siège lui-même, que comme le résultat déplorable et fatal des mesures de persécutions prises depuis tant d'années par le Gouvernement Italien, contre les religieux en général et les Capucins, même ceux des missions, en particulier. Je ne puis donc que reconnaître ici, comme toujours, la haute sagesse du Saint-Siège et celle de la Propagande, et m'en rapporter complètement à la décision qui sera prise par eux relativement à la pétition. Je m'unis complètement de cœur aux sentiments que vous exprimer à Sa Sainteté et surtout à la démarche que vous vous proposez de faire auprès du Gouvernement Italien afin d'obtenir de ce dernier qu'il retire les lois qui rendent déjà partout impossible le service des Missions étrangères par des missionnaires nationaux.

(Signé) "Cardinal LAVIGERIE."

No. 49.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received July 2.)

(No. 27.)

My Lord,

Tunis, June 26, 1891.

WITH reference to my despatch No. 22 of the 15th instant,* I have the honour to inform your Lordship that General La Veuve and Captain Fleury have returned to Tunis without the two officers of the Intelligence Department, who, I presume, have been left at Gabes.

I have also learnt that thirty large and six small field-guns were shipped at Goletta on the 18th for Gabes, besides seven waggon-loads of stores, which entered Tunis by degrees, and probably by rail, from Algeria.

Nine more field-guns and twelve waggons have been since seen on the road from Tunis to Goletta, and many hands are being employed at the arsenal of the latter place for the manufacture of harness, &c.

I have, &c.
(Signed) R. DRUMMOND HAY.

* Not printed.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received July 6.)

(No. 28. Confidential.)

My Lord,

Tunis, June 30, 1891.

WITH reference to my despatch No. 26 of the 24th instant, I have the honour to transmit to your Lordship herewith an extract of a letter addressed to me by a distinguished Maltese priest on the subject of the suppression of the Franciscan Mission in Tunis, which, in his opinion, has been brought about by Cardinal Lavigerie for the purpose of furthering the policy of the French Government in this country, and at the same time of introducing reforms in the Diocese of Carthage suitable to his personal interests.

I have, &c.
(Signed) R. DRUMMOND HAY.

Inclosure in No. 50.

Extract from a Letter addressed by a distinguished Maltese Priest to Consul R. Drummond Hay, dated June 1891.

(Translation.)

"THE departure of the Capuchin friars from Tunisia will be regarded by the generality of reflecting persons as a political stroke of the Cardinal Lavigerie, who serves his Government very well, and consequently receives their support in all measures he wishes to introduce.

"The ex-President Grévy once said of the Cardinal: 'That man in himself is worth a whole army.' This accounts for his being employed by the French Government, and there is no doubt that the matters intrusted to him are managed with great dexterity. Now, on the recall of the Capuchin fathers, all foreigners in Tunis, excepting the French, believe that the Cardinal wishes to render a service to the Government of the Republic by assisting them to destroy all foreign influence in Tunis, and especially the Italian.

"The Cardinal is well aware of the power exercised by the friars over the people, and that, as long as the Italian members of the Mission remain, he will never succeed in Gallicizing the Italians, whose influence will continue in full vigour.

"The same may be said, more or less, of the Anglo-Maltese, who will remain faithful subjects of Great Britain and attached to their native island so long as they are brought up and ministered to by Maltese priests, who are, to a certain extent, independent of the Cardinal; but from the moment that secular priests are named, although they may be Maltese, they will become by degrees, and almost imperceptibly, more or less French, and in time completely French.

"Take Algeria as an example. That province contains a large number of Maltese, who have always been ministered to by priests under French influence. They have now become almost entirely Gallicized, and many are even ignorant of their native language.

"In return for the service which the Cardinal will render to his Government, by debarrassing the country of the Maltese and Italian friars, and thus of foreign influence, there are grounds for believing that the Government will reward the Cardinal by appointing paid French priests ('Curati') in Tunisia, and thus deliver the Cardinal from the burden of granting subsidies to certain pious Missions in the Regency. This would increase the number of parishes, and attribute to the Cardinal the honour of having provided for the sacerdotal necessities of the country."

Admiralty to Foreign Office.—(Received July 13.)

Sir,

Admiralty, July 11, 1891.

WITH reference to your letter of the 24th June, inclosing observations on the question of the construction of a port at Bizerta communicated by Count Tornielli,* and copy of a despatch from Consul R. Drummond Hay, dated the 25th May, on the

same subject,* I am commanded by my Lords Commissioners of the Admiralty to request that you will state to the Marquis of Salisbury that they have perused with interest the printed inclosures to your letter, and my Lords desire me to add that the arguments therein contained do not in any way alter their Lordships' opinion as expressed in the Admiralty letter of the 6th February, 1891.

I am, &c.
(Signed) EVAN MACGREGOR.

Mr. Dering to the Marquis of Salisbury.—(Received July 15.)

(No. 126.)

My Lord,

Rome, July 5, 1891.

I HAVE the honour to acknowledge the receipt of your Lordship's No. 120 of the 16th ultimo, forwarding me copy of a despatch received from Her Majesty's Consul at Tunis on the subject of the recent suppression of the Capuchin Mission in that country.

Shortly afterwards, Count Raffo, accompanied by a Maltese advocate, Signor Camilleri, called on me to ask if I could do anything to assist them in their mission by obtaining an interview with His Holiness the Pope, or otherwise. I gave them a letter of introduction to Mgr. Stonor, Archbishop of Trebizond, telling his Grace I felt sure that, in recommending them to his good offices, I was doing the best I could for them and for our Maltese countrymen, whose cause they had come to plead. I subsequently had some conversation with his Grace, who said he would arrange that they should have an audience of the Pope, but as it was mainly a question between French and Italians in Tunis, he did not think they would do much good.

I have now the honour to forward to your Lordship copy of a letter which I have this morning received from Count Raffo on the eve of his departure for Tunis. I do not see, under the circumstances, how it would be possible for me to take any further steps in the matter.

I have, &c.
(Signed) HENRY NEVILL DERING.

P.S. (Confidential).—I forward confidentially, for your Lordship's information, copy of a private letter addressed to me by Sir Richard Wood, for many years Her Majesty's Agent and Consul-General at Tunis, which gives some interesting details as to the object of the expulsion of the Capuchin monks from that territory.

H. N. D.

Inclosure 1 in No. 52.

Count Raffo to Mr. Dering.

Sir,

Albergo Laurati, Rome, July 4, 1891.

I BEG to inclose a letter, which only reached me yesterday, and which is addressed to you by Sir Richard Wood, for many years Her Majesty's Consul at Tunis. I much regret being unable to present this letter to you personally, but I leave for Tunis to-day at 12 along with my Maltese friends.

Mr. Camilleri and myself had, finally, an audience yesterday from His Holiness. The Pope is, I fear, irremovable in his determination to withdraw the Capuchins from Tunis in accordance with Cardinal Lavigerie's wishes, but I am of opinion that if some pressure could be brought to bear on the Papal Secretary of State, he might still be prevailed upon either to postpone for a few months the departure of the Capuchin Fathers from Tunis, or otherwise compromise matters so as to allay the dangerous feelings of irritation prevalent amongst a considerable section of the Maltese and Italian residents.

I regret to find that Mgr. Stonor has been obliged to leave for England, as I attribute principally to his influence and kind interference the slight success we have scored in being allowed to speak to the Holy Father at all on this subject.

I am, &c.
(Signed) J. RAFFO.

Inclosure 2 in No. 52.

Sir R. Wood to Mr. Dering.

(Private.)

Dear Mr. Dering,

Nice, 2, Rue d'Angleterre, June 30, 1891.

ALTHOUGH I have [not] the honour of being personally known to you, yet, as one of the oldest public servants, I venture to introduce to you my son-in-law, Count Raffo, who has proceeded to Rome with a deputation from the foreign residents at Tunis to present a Petition to His Holiness the Pope, praying that His Holiness will be pleased to revoke the order recently issued by Cardinal Lavigerie, expelling from the Regency the Capuchin monks, who have been established there for the last 300 years.

Having resided in Tunis for nearly a quarter of a century in the capacity of Her Majesty's Diplomatic Agent and Consul-General, it is but natural that I should take some interest in the matter, seeing that some of the Friars are Maltese-British subjects, who, conjointly with their colleagues, have rendered valuable and good services to the various communities without distinction. Moreover, I am told that the Capuchins of Malta were the first to establish their community in Tunis; and it is unjust that they should be expelled by the arbitrary proceedings of a foreign Prelate, who, irrespective of his ecclesiastical character, is known to be, so far as foreign interests in Africa are concerned, a dangerous political agent.

We have a colony of several thousand Maltese in the Regency, many of whom are only acquainted with their own native language; and it is not fair that they should be deprived of their priests, and consequently of the rites of their religion.

Independently of the political object which the Cardinal has in view, namely, the progressive denationalization of the foreign element in Tunis, he is anxious to appropriate the church, convent, school, and, above all, the revenues of the Friars, derived from the donations of foreigners for centuries.

I observe that I have widely travelled from my original object, that of introducing to you my son-in-law, and to solicit on his behalf any kindness you may show him, or any advice you may be pleased to give him; but I trust to your indulgence to forgive me for trespassing on your patience, to which, however, I have been impelled by my not over friendly or Christian sentiments towards his reckless Eminence.

With my anticipated thanks, &c.

(Signed) RICHARD WOOD.

No. 53.

Colonial Office to Foreign Office.—(Received July 15.)

Sir,

Downing Street, July 15, 1891.

WITH reference to your letter of the 9th instant* relative to the suppression of the Franciscan Mission in Tunis, I am directed by Lord Knutsford to transmit to you, to be laid before the Marquis of Salisbury, for such action as his Lordship may see fit to take thereon, the copy of a despatch on the subject from the Governor of Malta, with inclosures in original, of which the return is requested.

I am to add that Lord Knutsford proposes, with Lord Salisbury's concurrence, to approve the reply of the Government of Malta to Her Majesty's Consul at Tunis of the 25th June.

I am, &c.
(Signed) EDWARD WINGFIELD.

Inclosure in No. 53.

Governor Sir H. Smyth to Lord Knutsford.

(Confidential.)

My Lord,

Palace, Valletta, June 25, 1891.

I HAVE the honour to forward herewith a copy of a despatch† addressed by Her Majesty's Consul at Tunis to Count Strickland, together with its inclosures, on the subject of the withdrawal of the Franciscan Capuchin Friars, the transfer of their

* Inclosing No. 50.

† Not printed.

property to the control of Cardinal Lavigerie's branch of ecclesiastical administration, and the feelings of and steps taken by the Maltese and other communities with reference to these events.

With reference to the last paragraph of the despatch of Her Majesty's Consul at Tunis, the Chief Secretary to this Government informed Mr. Drummond Hay that it is not in his power to use any influence at Rome, as requested; the Government of Malta not having received authority to act in the matter.

Although this reply will appear curt and evasive, it would not seem right that correspondence on this subject should be carried on with Tunis, where it may fall in other hands, or that any semi-official correspondence should be carried on with the Vatican, without previous directions from your Lordship, and I trust your Lordship may find it possible to cause Mr. Drummond Hay to be informed of the reasons on the absence of which no effort would have been spared to give him any possible assistance.

It is, however, clear that the replacing of the independent and simple Capuchins by priests who will be the nominees if not the tools of Cardinal Lavigerie is a great addition of moral power to French influence in Tunis, and will ultimately add through the migration between Malta and Tunis to the channels of French influence in Malta. The selection of parish priests as carried out by Mgr. Buhagiar in this island during his short administration has given striking examples of the mischief that might be sown through such agents if under the influence of such a Cardinal.

I have, &c.
(Signed) H. A. SMYTH.

No. 54.

The Marquis of Salisbury to Mr. Dering.

(No. 135.)

Sir,

Foreign Office, July 18, 1891.

I APPROVE your proceedings in connection with the suppression of the Capuchin Mission to Tunis, as reported in your despatch No. 126 of the 5th instant.

I am, &c.
(Signed) SALISBURY.

No. 55.

Foreign Office to Consul R. Drummond Hay.

(No. 9.)

Sir,

Foreign Office, July 18, 1891.

WITH reference to your despatch No. 28 of the 30th ultimo, I am directed by the Marquis of Salisbury to transmit to you herewith, for your information, copy of a despatch, and its inclosures, from Her Majesty's Chargé d'Affaires at Rome,* reporting his proceedings in connection with the visit of Count Raffo and a deputation to that city for the purpose of pleading against the suppression of the Capuchin Mission in Tunis.

I am, &c.
(Signed) P. CURRIE.

No. 56.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received July 20.)

(No. 30.)

My Lord,

Tunis, July 11, 1891.

WITH reference to my despatch No. 28 of the 30th ultimo, I have the honour to inform your Lordship that the Provincial of the Franciscan Mission in Tunis received yesterday instructions from Cardinal Simeoni, the Prefect of the Propaganda at Rome, to make arrangements for the departure of the Capuchin Friars in batches of two or three at a time, in order to avoid arousing public attention and causing a demonstration.

* No. 52.

The members of the deputation are expected to return from Rome on the 13th instant.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 57.

Mr. R. Drummond Hay to the Marquis of Salisbury.—(Received July 20.)

(No. 31.)

My Lord,

Tunis, July 14, 1891.

WITH reference to my despatch No. 29 of the 2nd instant, I have received a further report from Gabes that a large body of Touaregs had approached the Tunisian frontiers mounted on desert camels, but were attacked and repulsed by the French and native troops, with a loss of six killed amongst the Touaregs.

I have also the honour to inform your Lordship that the field-guns and ammunition mentioned in my despatch No. 27 of the 26th June as having been shipped to Gabes were not landed there, but were probably conveyed to Gerba or one of the smaller ports to avoid attracting attention.

There are at present 41 guns in the Goletta arsenal, and 280 cases of ammunition have either been stored there or shipped to the south of the Regency.

I have, &c.
(Signed) R. DRUMMOND HAY.

No. 58.

Foreign Office to Consul R. Drummond Hay.

(No. 10. Confidential.)

Sir,

Foreign Office, July 23, 1891.

LORD SALISBURY has received your despatches Nos. 25, 26, and 28 of the 16th, 24th, and 30th ultimo respectively relative to the proposed suppression of the Capuchin Mission in Tunis.

His Lordship has also had before him the Report from Her Majesty's Chargé d'Affaires at Rome upon this subject, of which a copy has been communicated to you in my despatch No. 9 of the 11th instant. I am now directed to state that, whatever may be the real objects of the intended measure, Her Majesty's Government are not in a position to take any effectual steps to prevent its being carried into execution.

A copy of a despatch from the Government of Malta to the Colonial Office relative to this matter is annexed, for your fuller information.*

I am, &c.
(Signed) P. CURRIE.

No. 59.

Foreign Office to Colonial Office.

Sir,

Foreign Office, July 23, 1891.

WITH reference to your letter of the 15th instant respecting the intended suppression of the Capuchin Mission in Tunis, I am directed by the Marquis of Salisbury to express his concurrence in the proposal to approve the reply of the Governor of Malta to Mr. Consul Hay's despatch upon this subject.

I am, at the same time, to transmit to you, to be laid before Lord Knutsford, the accompanying copy of a despatch relative to the matter, which his Lordship has caused to be addressed to Consul Hay.†

I am, &c.
(Signed) P. CURRIE.

* Inclosure in No. 53.

† No. 58.

No. 60.

Mr. Drummond-Hay to the Marquis of Salisbury.—(Received August 20.)

(No. 38.)

My Lord,

Tunis, August 11, 1891.

WITH reference to Mr. Ricketts' despatch No. 25 of the 30th March, 1889, and to my despatch No. 7 of the 5th February last, I have the honour to inform your Lordship that the establishment of a Court of Appeal at Tunis is reported to be under discussion at Paris, where M. Massicault is now residing on leave of absence.

Local opinion in the Regency is considerably divided on the subject. The chief points urged in favour of the reform by the administrators of the Protectorate are the benefits which the public would derive from a decrease in the costs of appeal.

Under the present system, appeals against Judgments of the Tunis Tribunals have frequently to be abandoned on account of the heavy expenses entailed by the distance of the Supreme Court at Algiers.

The opponents of the measure are principally Italians, Maltese, and a large portion of the French colony, composed of agriculturists and traders who are antagonistic to any reforms not tending to bring the country under the immediate rule of France.

They allege that the Judges of the Court of Appeal would be subject to the influence of the Residency, as is now the case with the local Tribunals, and as the French Resident already presides over the legislative and executive powers of the State, they fear that the addition of indirect judicial powers would transform him, to use the expression of a local newspaper correspondent, into an "Oriental despot."

It is also argued that the annual number of cases in appeal is not sufficiently large to necessitate the change. During last year, for instance, there were only sixty-four appeals out of 2,816 cases tried at Tunis and Susa.

The Italians, who also indorse these views, and are opposed to any reform likely to increase French influence, cite the IIIrd Article of the Franco-Italian Protocol of the 25th January, 1884, which stipulates that "the new system of jurisdiction shall not be modified without the explicit approbation of the Italian Government."

I have, &c.
(Signed) R. DRUMMOND-HAY.

No. 61.

Mr. R. Drummond-Hay to the Marquis of Salisbury.—(Received August 24.)

(No. 39.)

My Lord,

Tunis, August 18, 1891.

WITH reference to my despatch No. 18 of the 12th May, I have the honour to report that the works of the new canal at Bizerta have made considerable progress since last spring.

The cutting has been dredged to a depth of about 18 feet from the fisheries to within 300 yards of the sea, and is about 120 yards wide.*

The sand from the dredgers is used for the construction of the embankments, the levelling of the land between the canal and the town, and also for filling up portions of the old canal.

The northern breakwater has been prolonged about 150 yards since the autumn of last year, and is now about 550 yards in length.

The engineers employed at the works are of opinion that the lake fisheries will have to be entirely abandoned on the completion of the canal, owing to the current being too strong in other parts of the entrance to the lake.

I have, &c.
(Signed) R. DRUMMOND-HAY.

* See Mapn despatch No. 69 of October 28, 1890.

Record of Communication respecting Biserta made by Count Metternich, September 1, 1891.

COUNT METTERNICH states that their Consul reports as follows:—

The works for the construction of the harbour are being pushed forward.

The canal between the lake and the sea will be 3,600 metres long and 10 metres deep, sufficient to admit large vessels of war. Of this, 1,800 metres have been excavated to a depth of 3 metres.

There are four dredgers at work, and two steamers to carry off the earth.

The mole has been constructed for a length of 500 metres, leaving 700 metres to be completed.

A Decauville railway has been constructed for the transport of materials 4 kilom. long; eventually it is to be 8 kilom. in length.

430 workmen are employed, principally Frenchmen; twenty large sheds constructed to shelter them and the material.

The works are estimated to require two years more for completion.

T. H. S.

Foreign Office, September 1, 1891.

Consul R. Drummond Hay to the Marquis of Salisbury.—(Received September 7.)

(No. 41.)

My Lord,

Tunis, September 1, 1891.

I HAVE the honour to report to your Lordship that a telegram from Djerba published in a local newspaper, announces the entry on the 27th ultimo of the French torpedo-boat No. 34 into the Canal of Adjim for the purpose of visiting the Sea of Bougrara and the various ports of the island.

The bight of Bougrara forms an irregular lake which separates the Island of Djerba from the mainland. The greatest length is about 10 miles, and the greatest breadth about 7 miles.

It communicates to the west with the Gulf of Gabes or the Syrtis Minor by means of the narrow strait of Adjim, about 1½ miles broad, and with the sea to the east by a broader opening.

An article appeared in the "Dépêche Tunisienne" of the 10th June last, from which I inclose a cutting, on the subject of the Trans-Sahara railroad.

The Island of Djerba is there mentioned as a more suitable terminus for the railroad than the port of Gabes.

The bight of Djerba is stated to have a uniform depth of 15 metres, and to be capable of sheltering a fleet of the largest ships afloat. Djerba, the writer remarks, may thus be considered as the Bizerta of Southern Tunisia and the future port for the terminus of a railroad, which will open up an important trade between Europe and Central Africa.

Shortly before the appearance of this article, a French naval architect made an official inspection of the commercial ports in the south of the Regency, and I was informed at the time that his mission was chiefly in connection with the inland sea of Djerba.

I have no knowledge, however, of any commercial enterprise being contemplated in those regions by the Tunisian Government.

All undertakings have been hitherto confined to strategical operations on the Tripoli frontiers.

I have, &c.
(Signed) R. DRUMMOND HAY.

Inclosure 1 in No. 63.

Extract from "La Dépêche Tunisienne" of June 10, 1891.

DJERBA.—Il y a bien longtemps que nous ne nous sommes occupé du Trans-saharien; aussi croyons-nous devoir en parler, car, si nous n'en parlions jamais, il serait à craindre qu'on ne pût supposer que nous n'avons rien à en dire.

Or, nous avons, au contraire, beaucoup de choses à dire au sujet de ce chemin de fer, qui nous paraît beaucoup moins chimérique qu'on n'est peut-être généralement disposé à le croire et dont, très certainement, la construction ne saurait être fort éloignée aujourd'hui.

Il y a dix ans, c'est-à-dire à l'époque où le projet vit le jour, lorsqu'on parlait du Transsaharien, on ne manquait pas de faire les réserves les plus expresses et de bien insister sur le temps énorme qui devait s'écouler entre le moment de la conception de ce projet et celui de son exécution. Nombre d'années, disait-on, d'un air qui permettait de supposer qu'on entendait parler de siècles.

Et cependant, en moins de dix ans, voilà ce projet mis à l'ordre du jour.

Il s'y est mis tout naturellement, sans que personne, pour ainsi dire, ait pris directement l'initiative, mais parce que tout le monde en a parlé.

Il y a même eu des gens qui en ont parlé si souvent que d'autres ont été subitement pris d'un sentiment de jalousie, qui les a si bien poussés, qu'ils n'ont pas tardé à prendre la parole, à leur tour, pour attirer l'attention du public sur leurs conceptions personnelles, si bien qu'il s'est produit une espèce de concours.

Cette rivalité s'est d'abord établie entre les ingénieurs auteurs de projets dont quelques-uns nous ont paru remarquables. Nous ne parlerons pas de certains autres, et nous devons l'avouer, la question en elle-même profita de ces rivalités qui, après tout, n'avaient rien que de très naturel.

Cette rivalité professionnelle n'a pas tardé à engendrer des jalousies locales, car, chaque ingénieur ayant pris pour base une localité qui lui paraissait placée plus favorablement que les autres, les populations de ces endroits n'ont pas manqué de s'intéresser à la lutte et d'y prendre part, par l'organe de leur presse locale.

Chacun, de son côté, cherchait à étayer ses prétentions des meilleures raisons, et, nous devons l'avouer, la question en elle-même profita de ces rivalités qui, après tout, n'avaient rien que de très naturel.

Les trois provinces Algériennes, à l'exemple des trois déesses, se disputaient la pomme entre elles, sans avoir l'air de supposer qu'en dehors d'elles personne pût avoir l'audace de vouloir élever des prétentions.

Il y avait même, pour nous autres Tunisiens, quelque chose de très amusant dans cet oubli de notre existence.

Cet oubli était si naïf, si instinctif et si exempt de toute jalousie, qu'il eût été ridicule de se fâcher, ni même d'avoir l'air de s'en apercevoir.

Aussi, n'avons-nous rien dit et nous sommes-nous abstenus systématiquement de faire la moindre allusion à nos prétentions, d'autant plus qu'elles nous paraissent n'avoir rien à redouter de la concurrence, à qui nous avons laissé ainsi prendre les devants, avec notre courtoisie habituelle.

Aujourd'hui, le débat est un peu calme, par suite des préoccupations qui ont envahi les parties et qui les absorbent encore aujourd'hui. C'est pourquoi nous croyons pouvoir sans inconvénient prendre la parole à notre tour, non pas pour critiquer les projets des autres, ni pour faire de la propagande en faveur du nôtre, car nous n'en avons pas; mais simplement pour exposer quelques considérations assez fortes, suivant nous, pour faire cesser l'oubli peut-être un peu trop systématique dans lequel on nous a laissés.

Nous voulons tout simplement rappeler que nous existons et que, dans cette affaire, ce serait peut-être s'exposer à un mécompte que de nous oublier complètement.

Nous ferons remarquer, tout d'abord, que les Romains, nos maîtres en beaucoup de choses, mais surtout en matière de colonisation et de tracé des voies de communications, ne s'y étaient pas trompés, eux.

C'était surtout la Tunisie qu'ils avaient adoptée pour base de leurs entreprises dans le sud.

Comme ils étaient réduits à la traction animale pour tout moyen de transports, ils avaient dû nécessairement étudier leurs tracés avec beaucoup de soin, de sorte que les vestiges de leurs travaux sont, pour nous, des indications précieuses.

Or, toutes ces indications se combinent pour nous démontrer qu'à cette époque reculée, la véritable tête de la ligne des relations établies entre le centre de l'Afrique et la Méditerranée était située dans les parages de Gabès.

Ce n'était pas à Gabès même, mais à Djerba.

Ce choix s'explique très bien, car l'île de Djerba est, par sa situation même, à l'abri de toutes les agressions et, surtout à cette époque, elle pouvait être considérée comme absolument inattaquable.

En même temps, le Golfe de Djerba, très vaste et très profond, pouvait servir d'abri à des flottes entières, tandis que tout le restant de la côte, presque jusqu'à

l'Égypte, à l'exception de Tripoli, ne présente pour les navires aucun lieu de refuge à qui il soit possible de donner sérieusement le nom de port.

Les Romains avaient si bien apprécié les avantages que leur présentait le Golfe de Gabès qu'ils n'avaient pas hésité à accomplir un travail très considérable, qui existe encore aujourd'hui en majeure partie. Nous voulons parler de la chaussée qui réunissait autrefois l'île de Djerba à la terre ferme et qui servait à la fois de route pour aller à Djerba et de digue pour rendre le port encore plus sûr que la nature ne l'avait fait.

L'existence de ce travail, qu'il serait très facile de rétablir aujourd'hui, avec toutes les modifications indiquées par la science moderne, constate l'importance qu'avait jadis cette localité.

Il est impossible, du reste, de concevoir un port plus vaste, plus abrité et plus sûr que le Golfe de Djerba, qui a une profondeur presque uniforme d'environ quinze mètres, ce qui permettrait aux plus grands navires de s'y réfugier.

A ce point de vue, Djerba peut être considéré comme le pendant de Bizerte. Ces deux ports, l'un au nord, l'autre au sud de la Tunisie, ont chacun leur destination particulière et correspondent à l'un des besoins du pays.

Bizerte, admirable station pour tous les navires qui traversent la Méditerranée dans sa longueur, leur offrira un lieu de refuge, un point de ravitaillement, et, en même temps, un grand centre commercial.

L'avenir le plus prospère lui est assuré, et, fatalement, par la force même des choses, cette ville deviendra l'un des trois ou quatre grands ports de la Méditerranée.

Djerba, de son côté, est appelée à une destinée non moins brillante, car ce sera certainement sur son golfe que se construira la ville qui servira de tête de ligne du chemin du transit du commerce de l'Europe avec l'Afrique Centrale.

La situation de ce point est telle que les ingénieurs qui voudront étudier des projets sérieux de construction d'un Transsaharien pratique feront sagement de ne plus le négliger à l'avenir.

C'est tout ce que nous voulions dire aujourd'hui; nous voulions rappeler aux ingénieurs et autres personnages qui étudient la question du Transsaharien, l'existence du port de Djerba, qu'ils semblaient avoir oubliée un peu trop, et c'est ce que nous avons fait.

Inclosure 2 in No. 63.

Extract from "La Dépêche Tunisienne" of August 28, 1891.

Djerba, le 27 Août, 1891, 11 A.M.

LE TORPILLEUR 34.—Le Torpilleur 34 est entré hier dans le Canal d'Adjim, et va visiter la Mer de Bougrara. Il visitera successivement les différents ports de l'île.

No. 64.

Mr. R. Drummond Hay to the Marquis of Salisbury.—(Received September 21.)

(No. 42.)

My Lord,

Tunis, September 7, 1891.

WITH reference to Mr. Ricketts' despatch No. 29 of the 2nd April, 1889, and to previous correspondence, in regard to real property in Tunis, I have the honour to transmit to your Lordship herewith a copy of a Judgment of the Court of Appeal at Algiers in a suit between Messrs. Mille, Laurans, and Co., French subjects, and Moawia ben Ali Mogherini and others; also of an article on the extension of French jurisdiction in Tunis, extracted from the "Dépêche Tunisienne" of the 21st August.

The decision of the Court of Appeal is worthy of notice, as it confirms a Judgment of the Tunis Tribunal of the First Instance relating to real property in a suit between a French and a Tunisian subject.

The former had demanded matriculation by the Mixed Tribunal of a property called Enchir Mraïssa.

The Mogherinis, who disputed the boundaries claimed by Laurans and Co., abandoned the Shraa and submitted their case to the Mixed Tribunal.

That Court having refused to grant Laurans the matriculation of the land claimed by Mogherini, the case was brought by the former before the Tribunal of the First Instance on the 11th March, 1889, when, for various reasons set forth in the

Judgment, that Court declared itself competent to adjudicate in cases relating to real property.

Messrs. Laurans and Co. lost their claim, and the Court of Appeal at Algiers confirmed the Judgment of the Tunis Tribunal.

I beg to inclose a few remarks on the arguments of the Tunis Tribunal, where they endeavour to prove their competency to deal with questions relating to real property, and to inform your Lordship that there are many British subjects in the Regency, the holders of Arabic title-deeds of real property, verified by the Shraa or Ecclesiastical Courts of the country, who would be likely to oppose any interference of the French or Mixed Tribunals in cases of purchase and transfer, or of litigation concerning real property in which they might be interested.

During the two years that I have held this post the authorities have never called in question the rights of British subjects to refer to the Shraa matters relating to real property. Consequently, the summonses in cases of litigation between British subjects and Tunisian subjects have been transmitted through the Residency or the Consulate, as the case may be, for communication to the defendant in the suit.

I trust, therefore, that this system of procedure will continue to be respected by the authorities, and that the late Judgment of the Court of Appeal at Algiers may not encourage the Tunis Tribunal to interfere with the privileges of British subjects in matters relating to real property.

I have, &c.
(Signed) R. DRUMMOND HAY.

Inclosure 1 in No. 64.

Extract from "La Dépêche Tunisienne" of August 21, 1891.

TRIBUNAUX.

COUR D'APPEL D'ALGER (DEUXIÈME CHAMBRE).

Audience du 11 Avril, 1891.—Présidence de M. SAUZÈDE, Président.

Mille, Laurans, et Cie. contre Moawia-ben-Ali Mogherini et Consorts.

LE 13 Mars, 1889, le Tribunal de Première Instance de Tunis (2^e Chambre) a rendu le Jugement dont la teneur suit:

Le Tribunal:

Attendu que d'une décision rendue le 11 Mars, 1888, par le Tribunal Mixte de Tunis, il résulte que par réquisition du 26 Novembre, 1886, Mille (Adrien) a demandé, au nom de la Société Laurans et Cie., l'immatriculation d'une propriété dénommée l'enchir Mraïssa;

Attendu que différentes oppositions s'étant révélées dans les délais légaux, les demandeurs au procès actuel, Moawia-ben-Ali El Mogherini et consorts qui s'étaient désistés d'une instance qu'ils avaient intentée devant le Charâa, se trouvèrent parmi les opposants et consentirent à soumettre au Tribunal Mixte leur contestation;

Attendu que l'enchir Karrouba ou Kerraya qu'ils revendiquent, fut exclu du périmètre du bornage définitif, et que l'immatriculation, du chef de cet enchir, ne fut pas accordée à Mille, Laurans, et Cie.

Attendu, cependant, que ceux-ci étaient encore en possession du dit enchir; qu'ils y sont restés, et que les demandeurs, se basant sur une décision qui a implicitement reconnu leurs droits, sollicitent de ce Tribunal un Jugement les autorisant à se réintégrer sur un terrain qu'ils considèrent comme n'étant jamais sorti de leur patrimoine;

Attendu qu'à cette demande, Mille, Laurans, et Cie. opposent deux moyens;

Sur le moyen tiré de ce fait que Moawia se présenterait au procès au nom d'autres co-ayants droit qui ne sont pas en cause;

Attendu que le bénéficiaire d'une fondation pieuse qui, de son essence, est indivisible, Moawia-ben-Ali Mogherini a pu régulièrement agir au nom de tous ses co-ayants droit, ou mieux, représenter de leur aveu et de leur agrément, les intérêts de la fondation;

Qu'il n'est donc pas, à proprement dire, le mandataire, le procureur des autres bénéficiaires de la fondation, mais le représentant de celle-ci;

Que c'est à ce titre qu'il a agi dans la procédure en immatriculation, sans soulever de protestation de la part de Mille, Laurans, et Cie.

Attendu, au surplus, que telle est dans les usages locaux la façon ordinaire de procéder et que c'est le cas, pour le Tribunal, d'user de la faculté que lui attribue l'Article 60 de l'Ordonnance du 26 Septembre, 1842.

Sur l'incompétence proposée par Mille, Laurans, et Cie.

Attendu que le Tribunal Mixte, dont les décisions ont pour objet unique de se prononcer sur l'admission ou le rejet en tout ou en partie de l'immatriculation, et d'ordonner, en cas d'immatriculation, l'inscription des droits réels dont il a reconnu l'existence, ne saurait avoir compétence pour dire définitivement droit sur les oppositions à immatriculation qui lui sont déférées, que ces oppositions soient admises ou repoussées;

Que, dans ce cas, les terrains ou parcelles de terrains contestés, échappant à l'immatriculation, demeurent nécessairement dans l'état litigieux où elles se trouvaient au début de la procédure d'immatriculation.

Attendu, dans l'espèce, que Mille, Laurans, et Cie., étant alors en possession de l'enchir Karrouba ou Karraya, cette possession n'a pu que leur être maintenue;

Que les opposants, en un mot, en faisant exclure du bornage définitif les parcelles de l'enchir auquel ils prétendaient droit sans demander eux-mêmes et directement l'immatriculation, n'ont pu tendre qu'à un but et n'ont réalisé qu'un résultat, celui d'exclure de l'immatriculation les parcelles dont ils contestaient la propriété à Mille, Laurans, et Cie.

Attendu, et ce premier point dégagé, qu'il échet de décider, si comme le demandent Mille, Laurans, et Cie., le litige sera renvoyé devant la Charâa, ou si, conformément aux conclusions du demandeur, il sera retenu par ce Tribunal.

Attendu qu'en matière immobilière comme en toutes autres matières, les juridictions Françaises en Tunisie ont la plénitude d'attributions judiciaires; que loin d'entreprendre sur ce principe, le Décret du 31 Juillet, 1884, n'en est que la confirmation;

Attendu, en effet, que si, en étendant la compétence des juridictions Françaises en matière mobilière, ce Décret est muet sur les litiges immobiliers et les réserve dès lors implicitement aux Tribunaux locaux, il y a lieu de remarquer que cette réserve n'a pu être faite que conformément aux usages qui avaient alors cours en Tunisie, et auxquels les Traités diplomatiques ont attribué force de loi;

Attendu que, de coutume constante, les contestations relatives à des immeubles situés dans la Régence étaient, avant l'occupation, portées devant les Consuls, lorsque le défendeur était un Européen;

Que souvent même et alors que le défendeur était Musulman, le même fait s'est produit;

Attendu que, pour contredire une telle coutume consacrée par une pratique constante et dont les intéressés pouvaient à bon droit revendiquer le bénéfice, une disposition implicitement formulée ne pouvait suffire;

Que, bien plus, et cette disposition eût-elle été formelle, se serait soulevée la question de décider si les Conventions diplomatiques pouvaient l'autoriser;

Attendu, et quoi qu'il en soit, que cette faculté laissée par le Gouvernement à ses nationaux de faire juger par les juridictions Européennes les litiges immobiliers, résultait nettement de ce fait que jamais, dans la Régence, les matières immobilières n'ont été de celles que la Constitution du pays ou des considérations d'ordre public devaient exclusivement réserver aux juridictions locales;

Attendu que l'Article 4 du Décret du 31 Juillet, 1884, accentue de façon indiscutable cette idée, et qu'il considère si peu que les matières immobilières sont nécessairement et Constitutionnellement questions de juridiction Musulmane, qu'il prévoit l'institution d'une Commission qui aura pour but de rechercher et de déterminer les conditions dans lesquelles la compétence en matière immobilière sera remise aux Tribunaux Français;

Attendu que, si ce résultat n'a pas été complètement obtenu, il n'est pas cependant inutile de noter que l'Article 20 de la Loi Immobilière Tunisienne soumet à la juridiction des Tribunaux Français tous les immeubles immatriculés, et que, en cas de contestation sur les limites ou les certitudes d'immeubles contigus, lorsque l'un sera immatriculé et que l'autre ne le sera pas, la juridiction Française sera seule compétente;

Attendu que la conséquence à tirer de ces prémisses est que cette exception, qui

n'a rien d'absolu, et dont le principe a déjà été entamé, a pour but, non d'assurer un intérêt d'ordre public, qui de sa nature est inaliénable, mais de garantir, jusqu'au jour où une application d'une règle générale sera possible, des intérêts particuliers;

Attendu que, ainsi envisagé, le déclinaire proposé par Mille, Laurans, et Cie. n'est qu'un déclinaire *ratione personæ*, que celui qui est appelé à en bénéficier a seul droit d'invoquer;

Attendu que Mille, Laurans, et Cie., cités devant la juridiction de leur pays, ne sauraient avoir ni motif, ni qualité pour décliner la compétence de cette juridiction; qu'au surplus, leur prétention, si elle était admise, aurait ce singulier effet, que le demandeur, au cas où il triompherait devant le Charâa, ne pourrait obtenir l'exécution de la décision qui lui donnerait gain de cause, qu'après en avoir obtenu du Tribunal Français l'exequatur et de s'être dès lors soumis à une révision au fond; qu'un semblable résultat serait éminemment contraire à une bonne et régulière administration de la justice; qu'il préjudicie de la façon la plus grave à de légitimes intérêts;

Par ces motifs :

Sans avoir égard aux divers moyens proposés par les défendeurs, moyens dont ils sont déboutés;

Se déclare compétent et ordonne qu'il sera plaidé au fond; condamne les défendeurs aux dépens. (Présidence de M. Fabry, Vice-Président; Ministère Public: M. Vial, Juge-Suppléant.)

Sur l'appel de Mille, Laurans, et Cie., la Cour a statué en ces termes :

La Cour:

Par adoption des motifs des premiers Juges; confirme;

Dit que le Jugement déferé du 13 Mars, 1889, sortira son plein et entier effet;

Condamne Mille, Laurans, et Cie., à l'amende et aux nouveaux dépens. (Ministère Public: M. Marsan, Avocat-Général; MM. Soubiranne et Garau, Avocats.)

Inclosure 2 in No. 64.

Extract from "La Dépêche Tunisienne" of August 21, 1891.

EXTENSION DE LA JURIDICTION FRANÇAISE.—L'extension de la juridiction des Tribunaux Français est le but auquel doivent tendre les efforts, non seulement de l'Administration du Protectorat, mais aussi ceux de tous les Français de Tunisie.

Il a déjà été beaucoup fait à ce point de vue, et nous devons nous féliciter des résultats obtenus, car l'existence des Capitulations semblait devoir apporter à leur réalisation des obstacles insurmontables.

On a heureusement pu en triompher, grâce à une persistance infatigable, et aussi, grâce à l'habileté des procédés employés pour convaincre certains Gouvernements, qui paraissaient peu disposés à entrer dans cette voie, de la nécessité de cesser une opposition qui nous gênait sans apporter, comme compensation, aucune garantie aux intérêts véritables de leurs nationaux.

Aussi, avons-nous toujours enregistré avec plaisir tous les progrès accomplis par nos Tribunaux, qui, peu à peu, gagnent la confiance de tous par leur attitude, en même temps que la nécessité de simplifier l'administration de la justice, fait chaque jour accroître l'étendue de leur compétence.

C'est ainsi que nous avons eu le plaisir, récemment, de constater que certaines Administrations Tunisiennes, les Postes et Télégraphes, par exemple, en vertu d'un Décret récent, avaient été soumises à la juridiction Française. Aussi, sommes-nous très heureux de pouvoir reproduire un Jugement de la Cour d'Appel d'Alger réglant, en faveur de la compétence des Tribunaux Français de Tunis, une cause qui a été récemment plaidée devant elle.

Inclosure 3 in No. 64.

Remarks by Mr. R. Drummond Hay on a Judgment of the Court of Appeal at Algiers in the suit Mille, Laurans, and Co. v. Moawia-ben-Ali Mogherini and others.

Extracts.

Remarks.

ATTENDU que différentes oppositions s'étant révélées dans les délais légaux les demandeurs au procès actuel, Moawia-

THE option of Mogherini and others to refer their case to the Shraa is admitted by this clause.

Extracts.

ben-Ali El Mogherini et consorts, qui s'étaient désistés d'une instance qu'ils avaient intentée devant le Shraa se trouvèrent parmi les opposants et consentirent à soumettre au Tribunal Mixte leur contestation.

Attendu que l'encher ("farm") Karrouba ou Kerraya qu'ils revendiquent, fut exclu du périmètre du bornage définitif et que l'immatriculation du chef de cet encher ne fut pas accordée à Mille, Laurans, et Cie.

Remarks.

Article 37, Chapter II, section 3 of the Matriculation Law for Mixed Tribunals of the 1st July, 1885, states:—

"Les décisions du Tribunal Mixte ne seront susceptibles d'aucune opposition, appel, ou recours quelconque. . . ."

The French Law of the 17th July, 1888, Article 2, states:—

"Le titre dressé ensuite de la décision du Tribunal Mixte prononçant l'immatriculation est définitif et inattaquable; il formera devant les juridictions Françaises le point de départ unique de la propriété et des droits réels qui l'affectent à l'exclusion de tous autres droits non inscrits."

Messrs. Laurans et Cie. were therefore entitled to refer to the French Tribunals their claim relating to the farm of Kerraya, which had been excluded from matriculation by the Mixed Tribunals.

The Beylical Decree referred to is that of the 31st July, 1884, extending the competence of French Tribunals to civil and commercial matters.

Article 5 of that Decree is as follows:—

"Il est instituée une Commission chargée de préparer la codification des Lois relatives à la propriété foncière en Tunisie et de proposer les conditions dans lesquelles la compétence en matière immobilière sera remise aux Tribunaux Français."

The Commission was subsequently appointed, resulting in the establishment of the Mixed Tribunals by Beylical Decree of the 1st July, 1885.

A Decree of the President of the French Republic dated the 17th July, 1888, determined the extent of the competence of French jurisdiction in Tunis over real property.

This clause acknowledges that the Decree of the 31st July, 1884, was silent as to real property, and that the reserve was owing to usages which had become law by Treaty stipulations with foreign Powers.

Attendu en effet que si en étendant la compétence des juridictions Françaises en matière immobilière ce Décret est muet sur les litiges immobilières et les réserve dès lors implicitement aux Tribunaux locaux, il y a lieu de remarquer que cette réserve n'a pu être faite que conformément aux usages qui avaient alors cours en Tunisie et auxquels les Traités diplomatiques ont attribué force de loi.

Attendu que de coutume constante les contestations relatives à des immeubles

This assertion is inadmissible as regards the British Consulate-General.

Extracts.

situés dans la Régence étaient, avant l'occupation, portées devant les Consuls lorsque le défendeur était un Européen.

Remarks.

All cases of litigation respecting immovable property between British subjects, and between British and Tunisian or other foreign subjects, were referred for adjudication to the Shraa in accordance with the stipulations of Article IV of the Convention of 1863.

The summons for the appearance of a British subject before the Shraa was transmitted by the authorities through the Consul-General.

Although the same Article of the Convention made it optional for British subjects in cases of disputes between themselves to have their differences heard and determined by their Consul-General, no case can be cited where advantage was taken of this clause in the Treaty without at least obtaining a legal opinion of the Kadi on the merits of the case.

All disputes between Europeans and Mussulmans were, without exception, referred to the Shraa for adjudication.

The arguments which follow to the end of the column in the Report are based on the assertion that the Consuls heard and determined questions relating to real property. Further comment is therefore needless.

Messrs. Mille and Laurans were finally compelled, as French subjects, to submit to the jurisdiction of the French Tribunal, and were informed that even if their claim were referred to the Shraa, and decided in their favour, they would not be able to obtain an execution of the Judgment of the said Court.

Que souvent même et alors que le défendeur était Musulman le même fait s'est produit.

Attendu que Mille, Laurans, et Cie., cités devant la juridiction de leur pays ne sauraient avoir ni motif, ni qualité pour décliner la compétence de cette juridiction, qu'au surplus leur prétention, si elle était admise, aurait ce singulier effet que le demandeur, au cas où il triompherait devant le Shraa, ne pourrait obtenir l'exécution de la décision qui lui donnerait gain de cause.

*Annex.**Memorandum respecting Real Property in Tunis.*

[See Consul Ricketts' No. 29, Political, of April 8, 1889.]

THE Acting Consul at Tunis forwarded a Decree of the President of the French Republic, dated the 17th July, 1888, which was considered to revoke the authority of the French Tribunal to review the decisions of the Mixed Local Tribunals in cases affecting real property in Tunis, in consequence of which revocation British subjects would in future be submitted to the jurisdiction of the Bey. This, Mr. Carbonero represented, was in contravention of Article IV of the Convention between Great Britain and Tunis of the 10th October, 1863.

Consul Ricketts was informed, in reply, that by the Order in Council of the 31st December, 1882, British Consular jurisdiction was abolished "as regards such matters and cases as came within the jurisdiction of the French Tribunal."

That as those Tribunals had now been deprived of jurisdiction in real property, this country must revert to its Treaty rights until the French Courts were invested *de novo* with the jurisdiction in question, and otherwise in such cases British subjects would be entirely at the mercy of native Tribunals, and he was instructed to inform the French Resident accordingly.

Acting
Consul Carbonaro,
No. 16,
Commercial,
August 3,
1888.

To Consul
Ricketts,
No. 16,
November
17, 1888.

Consul
Ricketts,
No. 25,
November
27, 1888.

M. Wad-
dington,
Memoran-
dum, De-
cember 11,
1888.

To Consul
Ricketts,
No. 10,
Confidential,
January 18,
1889.

Consul
Ricketts,
No. 23,
March 25,
1889.

Consul
Ricketts,
No. 29,
April 8,
1889.

This he did in due course. On the 11th December the French Ambassador at this Court communicated a Memorandum, showing that the bearing of the Decree of the 17th July had been misapprehended, and pointing out that its effect was not to withdraw suits respecting real estate from French jurisdiction, but to make provision for registering titles to land.

The Consul was thereupon instructed to report fully upon the matter, and to furnish copies of certain laws, &c., which were specified and referred to in the Convention of 1863 between this country and Tunis, and in the Decrees of the 17th July and 6th November, 1888, together with any others that might affect the question.

He sent copies of these documents.

He also furnished a Memorandum, replying to the principal points in M. Waddington's Memorandum. Mr. Ricketts criticizes the power of French Tribunals to administer Mussulman Law, contending that French Tribunals are not justified in taking cognizance of suits relating to real property arising between Europeans. He also maintains that by the Decree of the 17th July, 1888, certain cases are withdrawn from French jurisdiction.

Foreign Office, May 15, 1889.

No. 65.

Mr. R. Drummond Hay to the Marquis of Salisbury.—(Received September 21.)

(No. 43.)

My Lord,

Tunis, September 12, 1891.

WITH reference to my despatch No. 27 of the 26th June, I have received information from a reliable source of the arrival at the Goletta Arsenal of a considerable supply of telegraph cable for the use of submarine torpedoes.

The Commander of the "Hirondelle," stationed at Tunis, who has lately returned from a cruise with his ship in the southern ports of the Regency, is in charge of the cable, which, I am told, is intended for the defences of Goletta and other harbours of the Tunisian coast.

I have, &c.

(Signed) R. DRUMMOND HAY.

No. 66.

Mr. R. Drummond Hay to the Marquis of Salisbury.—(Received October 10.)

(No. 48.)

My Lord,

Tunis, October 4, 1891.

WITH reference to my despatch No. 24 of the 16th June, I have the honour to report to your Lordship the arrival at Goletta on the 1st instant of Her Majesty's ship "Scout," commanded by Prince Louis of Battenberg, who, on landing, called at the Consulate-General, and handed to me a copy of the Naval and Military Signal Code and a despatch from Sir George Tryon, informing me that he has assumed the chief command of Her Majesty's ships in the Mediterranean Station.

The "Scout" also touched at Bizerta, where a copy of the Code was handed to Mr. Bourke, the Consular Agent.

The Prince, on his arrival, called on the French Resident and on the General commanding the Army of Occupation, who immediately returned the visits. Yesterday he was presented by M. Massicault to the Bey and to Sid Tayeb, the hereditary Bey.

The receptions were most cordial, and M. Massicault expressed his regret that Prince Louis was unable to prolong his stay in Tunis.

The "Scout" left yesterday evening for the ports of Susa Sfax and Tripoli, bound for Malta.

I beg to mention that I have forwarded by the "Scout" my despatches to your Lordship No. 46, Confidential, and No. 47 of the 3rd instant.

I have, &c.

(Signed) R. DRUMMOND HAY.

No. 67.

Foreign Office to Acting Consul-General Carbonaro.

(No. 11.)

Sir,

Foreign Office, October 17, 1891.

WITH reference to Consul-General Drummond Hay's despatch No. 42 of the 7th ultimo, I am directed by the Marquis of Salisbury to transmit to you herewith, for your information and guidance, copy of an opinion on the subject of the laws affecting real property in Tunis, which was furnished by M. Clunet, legal adviser to Her Majesty's Embassy at Paris, on the 23rd September, 1889.

I am, &c.

(Signed) T. H. SANDERSON.

Inclosure in No. 67.

CONSULTATION DE M. ÉDOUARD CLUNET, AVOCAT À LA COUR DE PARIS.

Régime de la Propriété Immobilière en Tunisie, avant et depuis le Protectorat Français.
Condition faite aux Sujets Britanniques au point de vue législatif et juridictionnel.

(Received at the Foreign Office, October 4, 1889 : Inclosure in Lord Lytton's despatch No. 426 of September 26.)

LE Soussigné Édouard Clunet, Avocat à la Cour de Paris, consulté par son Excellence l'Ambassadeur d'Angleterre—

Sur la portée du Décret du Président de la République Française, en date du 17 Juillet, 1888, relatif à l'immatriculation des immeubles dans la Régence de Tunis;

Sur les objections soulevées par le Consulat Anglais à Tunis et par le Gouvernement Britannique relativement à ce Décret;

Vu les Lois Tunisiennes sur le régime foncier du 1^{er} Juillet, 1885, et 16 Mai, 1886;

Vu le Décret du 17 Juillet, 1888, et la législation ultérieure;

Vu les Traités Anglo-Tunisiens du 10 Octobre, 1863, et du 19 Juillet, 1875;

Vu la correspondance entre le Consul Anglais à Tunis et le Foreign Office; les Mémoires de l'Ambassadeur de France à Londres, du 11 Décembre, 1888, et du dit Consul Anglais en date à Tunis du 2 Avril, 1889, et les autres pièces du dossier;

A émis le présent avis :

I.—Condition de la Propriété Immobilière en Tunisie au moment de l'établissement du Protectorat Français.

Le Traité du 12 Mai, 1881, a établi le Protectorat de la France sur la Régence de Tunis.

Une Loi Française du 27 Mars, 1883, a institué l'établissement de la juridiction Française en Tunisie en toute matière civile, commerciale, et pénale.

Le 5 Mai, 1883, un Décret était promulgué dont l'Article Unique s'exprimait ainsi : "Les nationaux des Puissances amies, dont les Tribunaux Consulaires seront supprimés, deviendront justiciables des Tribunaux Français dans les mêmes cas et les mêmes conditions que les Français eux-mêmes."

C'est en présence de cette nouvelle législation du Protectorat que la France ouvrit, au cours de l'année 1883, avec les différentes Puissances, et notamment avec l'Angleterre, des négociations devant amener la suppression de la juridiction Consulaire, consacrée par les Capitulations, à raison de la défiance que la justice indigène inspirait à toutes les nations Occidentales indistinctement.

Ces négociations aboutirent à un résultat effectif en 1884.

Les Tribunaux Consulaires ont été successivement fermés, dans l'ordre chronologique, par :—

Le Portugal, en Juin 1883;

La Suède et Norvège, le 25 Juillet, 1883;

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Le Danemark, le 26 Septembre, 1883 (décision de Juillet 1883);
 L'Angleterre, le 1^{er} Janvier, 1884 (ordre du Conseil du 31 Décembre, 1883);
 L'Espagne, le 17 Janvier, 1884 (décision du Gouvernement Royal de Mai 1883);

L'Allemagne, le 1^{er} Février, 1884 (Décret du 21 Janvier, 1884);
 La Belgique, le 1^{er} Février, 1884;
 La Grèce, le 24 Mars, 1884;
 L'Autriche-Hongrie, le 1^{er} Juillet, 1884 (Ordonnance du 30 Mai, 1884);
 L'Italie, le 1^{er} Août, 1884 (Décret du 21 Juillet, 1884);
 La Russie, le 5 Août, 1884 (Décret de Juillet 1884);
 Les Pays-Bas, le 1^{er} Novembre, 1884 (Loi du 7 Octobre, 1884).

Nous reviendrons sur les conditions et sur l'état d'esprit où la renonciation à la juridiction Consulaire a été consentie par l'Angleterre.

Après avoir donné à la Tunisie une justice régulière de nature à rassurer les intérêts Européens, la France entreprit la tâche nécessaire de légiférer sur les matières les plus importantes.

Au premier rang se présentait la propriété immobilière. Le Protectorat Français trouvait cette matière un peu à l'état chaotique en Tunisie. Les immeubles sont régis en ce pays par le droit sacré, c'est-à-dire par le droit qui dérive du Coran. Une glose touffue s'est développée sur les quelques maximes contenues dans le livre des croyants, de telle sorte qu'il est de la plus extrême difficulté de se diriger au milieu des interprètes et des commentateurs qui ont travaillé depuis plusieurs siècles à élucider le texte sacré. Sous l'empire d'une législation aussi incertaine, que son caractère religieux empêche cependant de réformer, les transactions sont difficiles et exemptes de sécurité.

La seule garantie est que le droit de propriété ne peut être cédé que par acte émané de certains officiers publics. L'officier ou notaire chargé de dresser l'acte a pour mission de constater la consistance de l'immeuble vendu et le droit du vendeur, mais il ne dispose d'aucun moyen efficace de les reconnaître. Ne pouvant consulter, comme en Occident, ni cadastre, ni livres d'enregistrement ou fonciers, il a recours à la notoriété publique. Il se rend sur les lieux, et, assisté de géomètres, il procède à une enquête. Il consigne le résultat de son investigation en un procès-verbal appelé "outika," au bas duquel l'acte de vente est porté. En cas de nouvelle cession du même immeuble, il n'est pas procédé à une nouvelle enquête, et le second contrat est rédigé à la suite du premier.

Ce titre ne tend à établir que le droit principal de propriété, mais les charges de toute nature, et même les démembrements qui peuvent l'affecter, n'y sont pas mentionnés.

Encore ce titre, tout insuffisant qu'il est, ne donne pas à son détenteur une certitude absolue même sur la propriété. Les enquêtes qui servent de base au procès-verbal "outika" n'offrent pas de garantie. Les voisins consultés ignorent en quelle qualité le détenteur actuel d'un immeuble en jouit. Est-ce comme propriétaire, comme usufruitier, comme emphytéote, comme administrateur d'Habou? Cette difficulté de préciser les droits des divers intéressés a permis l'accomplissement de fraudes fréquentes, dans lesquelles des praticiens indigènes peu scrupuleux ont acquis un art redoutable.

Les auteurs qui ont étudié le régime immobilier antérieur au Protectorat Français en citent des exemples frappants. Un propriétaire détient un immeuble en vertu d'un titre sur lequel il a été consigné que l'immeuble lui a été vendu à réméré pour gager sa créance; il vend l'immeuble sans produire son titre: "l'outika" est dressé, l'achat conclu, et le prix payé. Mais le débiteur s'acquitte envers son créancier et fait rescinder la deuxième vente accomplie au mépris du pacte de réméré; le deuxième acheteur est dépouillé. Ou encore, le propriétaire possède un titre régulier; mais il le dissimule, il vend sur un simple "outika;" puis il vend une deuxième fois avec son titre; le titre prévalant sur "l'outika," le premier acheteur est évincé.

A ces causes normales de la précarité de la propriété, il faut en ajouter d'autres telles que les confiscations qui ont contribué à troubler l'assiette de la propriété foncière en Tunisie. Des titres réguliers sont aujourd'hui exhibés par les ayants cause d'anciens concessionnaires de biens confisqués ou de simples usurpateurs, tandis que les descendants des propriétaires originaires conservent encore les titres des mêmes domaines dans l'espoir qu'un revirement des événements ou de la faveur souveraine leur permettra de ressaisir les biens de leurs ancêtres. Des territoires entiers, et naturellement les plus fertiles, sont ainsi à l'état litigieux latent.

Les Européens qui sont venus s'établir en Tunisie à la suite de l'occupation

Française sont tombés au milieu de ces difficultés parfois inextricables. Beaucoup d'entre eux ont vu s'ajouter aux embarras d'une exploitation agricole à ses débuts, les soucis de contestations obscures au milieu desquelles ils avaient peine à se dégager.

Une condition aussi précaire de la propriété immobilière appelait un remède immédiat.

II.—Régime de la Propriété Foncière sous le Protectorat Français.

C'est dans ces circonstances que l'Article 5 du Décret du 31 Juillet, 1884, a institué une Commission chargée "de préparer la codification des Lois relatives à la propriété foncière en Tunisie et de proposer les conditions dans lesquelles la compétence en matière immobilière sera remise aux Tribunaux Français."

Cette Commission a été composée de personnalités distinguées de différentes nationalités sous la présidence du Résident Général.

Les travaux de cette Commission ont abouti à la Loi du 1^{er} Juillet, 1885, sur la propriété foncière, modifiée en certains points par celle du 16 Mai, 1886.

Cette Loi, fort détaillée, qui ne contient pas moins de 381 Articles, forme un véritable Code Foncier pour la Tunisie.

Il convient d'abord de remarquer qu'elle n'est pas la reproduction de la législation Française propre à la matière; elle établit un régime foncier spécial à la Tunisie s'efforçant de répondre aux nécessités particulières de la colonisation.

Le droit de propriété proprement dit, ses charges et démembrements tels que usufruit, usage, habitation, servitudes, privilèges, antichrèses, et hypothèques y sont précisés nettement. Sur ces questions de principe, l'emprunt au Code Civil Français a été large. D'importantes modifications y ont été admises telles que les droits "enzel" (constitution de rente immobilière), et de superficie, établis selon le mode Tunisien; les hypothèques légales et judiciaires ont été rejetées; les hypothèques conventionnelles ont été organisées suivant une procédure perfectionnée. Mais, ce en quoi la loi foncière Tunisienne se distingue, c'est par un mode de publicité appliqué à tous les droits réels immobiliers, et emprunté à diverses législations qui se sont inspirées de l'Acte Torrens.

Dans l'intention de se conformer aux habitudes en vigueur en Tunisie, où nous l'avons vu, l'emploi des titres de propriété était en usage, chaque immeuble est maintenant représenté par un titre qui en fait connaître la consistance matérielle et l'état juridique. La consistance matérielle est fournie par une description de l'immeuble et un plan annexé au titre; l'état juridique, par la mention sur le titre de tous les droits réels assés sur l'immeuble. Le titre fait foi par lui-même. Rien ne prévaut contre les indications qu'il contient. L'examen du titre lui-même permet donc de contracter en parfaite connaissance de cause.

Le nouveau régime immobilier s'est trouvé supérieur, non seulement à la législation vague et pleine de pièges qui régissait jusque là le sol Tunisien, mais par certains points, en avance sur la législation Française. Toutefois il a paru préférable au législateur de ne pas imposer violemment le progrès réalisé. En conséquence la législation et la juridiction Tunisienne ont été maintenues comme droit commun et juridiction ordinaire de la Régence. Il a seulement été ouvert aux propriétaires de toute nationalité, Européens ou indigènes, la faculté de soustraire leurs propriétés à l'une et l'autre, et d'obtenir pour elles le bénéfice de la Loi nouvelle et de la juridiction Française.

Pour atteindre ce résultat, il suffit aux propriétaires de manifester leur volonté par une procédure appelée "l'immatriculation;" les détails en sont mentionnés dans les Articles 18 à 43 de la Loi Fondamentale du 1^{er} Juillet 1885, modifiée par la Loi du 16 Mai, 1886.

"L'immatriculation a pour objet de placer l'immeuble qui y a été soumis sous le régime de la présente Loi." (Article 18.)

"L'immatriculation est facultative." (Article 22.)

"Les immeubles immatriculés ressortiront exclusivement et d'une manière définitive à la juridiction des Tribunaux Français." (Article 20.)

L'immatriculation consiste dans la rédaction d'un titre comprenant la description topographique de l'immeuble et l'insertion de tous les droits réels qui l'affectent. Contre ce titre, plus rien ne peut prévaloir.

Ce titre est rédigé par le Conservateur de la propriété foncière, à qui le requérant de l'immatriculation doit fournir des déclarations détaillées en l'Article 23.

Le Conservateur, dans certains délais, envoie copie de ces déclarations aux

autorités du lieu de la situation de l'immeuble. A l'expiration d'une procédure spéciale de publicité, le titre définitif est constitué.

Cependant les intérêts des tiers prétendant droit à l'immeuble en instance d'immatriculation sont sauvegardés. Ils peuvent former opposition à cette immatriculation.

La connaissance de cette opposition est déferée à un Tribunal Mixte (Article 33) composé d'un Président, Magistrat Français, et de six Assesseurs, dont trois Français et trois indigènes.

Si les parties en cause sont des justiciables des Tribunaux Français, la Chambre qui statue est composée de trois Magistrats Français; si elles sont Tunisiennes, la Chambre est composée de trois Magistrats Tunisiens; lorsqu'il y a en cause des justiciables du Tribunal Français et des Tunisiens, la Chambre est composée de deux Magistrats Français et deux Magistrats Tunisiens, sous la présidence obligatoire du Président du Tribunal; ce Magistrat étant Français, la majorité reste acquise à l'élément Français.

Il importe de retenir la composition du Tribunal Mixte.

Les décisions du Tribunal Mixte ne sont susceptibles d'aucun recours quelconque. (Article 37).

Le Tribunal Mixte statue au fond sur toutes contestations que peut soulever l'immatriculation (Article 37); sauf le cas où l'opposition à l'immatriculation est faite par un justiciable des Tribunaux Français qui, avant toute défense au fond, demande à porter l'affaire devant la juridiction Française.

Si l'immatriculation est rejetée, le requérant peut se pourvoir devant la juridiction compétente (Article 37 *in fine*), c'est-à-dire devant le Tribunal Français pour des justiciables de ces Tribunaux.

Toute personne lésée par une immatriculation ne peut plus recourir sur l'immeuble, mais a une action personnelle en dommages-intérêts.

C'est en présence de cet état législatif fondamental qu'ont été rendus en 1888 deux Actes législatifs sur lesquels notre attention est plus particulièrement appelée, mais dont la valeur et l'effet ne seraient pas compréhensibles s'ils étaient envisagés isolément.

Le premier Décret est du 17 Juillet, 1888. Le Rapport du Ministre des Affaires Étrangères et du Garde des Sceaux au Président de la République, qui le précède et en expose les motifs, rappelle que le progrès, dont la réalisation est poursuivie en Tunisie en matière de régime foncier, est la sécurité et la certitude dans les transactions d'immeubles. Cet avantage ne peut être acquis que si les pouvoirs respectifs du Tribunal Mixte, chargé de contrôler les immatriculations, et des Tribunaux Français, investis de la juridiction en matière immobilière, sont nettement précisés.

Conséquemment, le Décret, dans son Article 1^{er}, dit: "Les droits réels sur les immeubles immatriculés sont régis par les Lois Tunisiennes spécialement édictées pour cette catégorie d'immeubles, et les litiges y relatifs ressortiront aux juridictions Françaises dans la Régence."

Première Observation.—L'Article 1^{er} du Décret ne contient aucune innovation à la Loi Fondamentale de 1885-86. Nous avons vu *supra* que les dispositions de cet Article 1^{er} étaient déjà contenues dans les Articles 18 et 20 de la Loi précitée (voir texte, p. 4).

Le Décret du 17 Juillet, 1888, dispose dans son Article 2: "Le titre dressé en suite de la décision du Tribunal Mixte prononçant l'immatriculation est définitif et inattaquable; il formera devant les juridictions Françaises le point de départ unique de la propriété et des droits réels qui l'affectent, à l'exclusion de tous autres droits non inscrits."

Deuxième Observation.—Ici encore, le Décret n'innove pas. Il se borne à présenter sous une formule peut-être plus nette des principes posés d'une façon déjà très claire dans les Articles 18, et surtout 37 (paragraphe 1) de la Loi de 1885-86 (voir texte de l'Article 37, ci-dessus).

Il est donc inexact de dire que le Décret du 17 Juillet, 1888, retire aux Tribunaux Français le droit de reviser les décisions du Tribunal Mixte dans les affaires intéressant la propriété immobilière. Ce droit n'a jamais appartenu aux Tribunaux Français. L'esprit de la Loi de 1885-86, organisatrice du régime foncier Tunisien, a été, pour éviter les lenteurs et des procès peut-être interminables, de remettre au Tribunal Mixte, fonctionnant plutôt comme Tribunal arbitral que comme Tribunal judiciaire, les pouvoirs de trancher définitivement et sans appel les difficultés pouvant s'élever autour de la constitution du titre de propriété appelée "immatriculation." Il suffit de

relire les Articles 19 et 37 de cette Loi pour voir que le législateur a manifestement exprimé son intention dès le début. Il n'a fait que se répéter le 17 Juillet, 1888.

La Loi du 6 Novembre, 1888 (2 Rabial-el-Aoual, 1306) modifie les Articles 22, 26, 36, et 295 de la Loi Fondamentale de 1885-86.

Ces modifications portent sur des détails insignifiants. Nous avons collationné le texte ancien avec le texte nouveau, et nous avons constaté qu'elles étaient sans intérêt pour la solution des questions actuellement examinées. Nous avons indiqué dans l'exemplaire joint au dossier de "La Législation de Tunisie, par M. Bompard" (Paris, 1888), aux Articles précités, les légers changements de rédaction qu'ils ont subis le 6 Novembre, 1888.

III.—Condition Juridique des Anglais en Tunisie. Comment elle est affectée par la Législation édictée sous le Protectorat Français, notamment au point de vue de la Propriété Immobilière.

Dans le dossier qui nous est soumis, les observations, provoquées par l'établissement du nouveau régime foncier Tunisien, nous semblent procéder d'un double point de vue:—

1. Le point de vue de M. le Consul Anglais à Tunis.
2. Le point de vue Métropolitain (c'est-à-dire, du Gouvernement Britannique).

1. Pour M. le Consul Anglais à Tunis, la Loi Foncière de 1885-86 et la procédure qui en règle l'application ne valent rien. Il souhaite le maintien de la législation et de la juridiction Musulmanes; le "Charâa" doit avoir seul compétence dans tous les litiges, même ceux intéressant les Européens; les Tribunaux Français ne sont pas qualifiés pour connaître des actions immobilières, même entre Européens; la Cour du Charâa et le Traité de 1863 sont mis en péril par l'institution du Tribunal Mixte, lequel, d'ailleurs, n'aurait pu être institué qu'avec l'assentiment des Puissances.

Ces critiques nous paraissent faire abstraction d'un fait considérable survenu en Tunisie en 1881: l'établissement officiel du Protectorat d'une Puissance, civilisée, et sa consécration par le Gouvernement Anglais, aux termes de "l'Order in Council" du 31 Décembre, 1883.

On peut discuter les mérites intrinsèques de la Loi Tunisienne de 1885-86 sur le régime foncier. Les Gouvernements Français et Tunisien ont cru, en l'édicant, réaliser un progrès important, consistant à donner aux transactions immobilières une sécurité dont elles étaient jusque-là dépourvues dans la Régence. Pour atteindre ce but, désirable en lui-même, ils ont combiné le double rouage du Tribunal Mixte, fixant le titre, point de départ de la propriété, et du Tribunal Civil Français, statuant sur les actions réelles qui naîtraient ultérieurement au sujet de la propriété fixée par ce titre.

Faut-il décerner à ce système des éloges sans restriction comme au plus ingénieux qui se pouvait concevoir? Faut-il, au contraire, ne lui réserver que des objections? Là n'est pas la question, d'autant plus qu'aucune œuvre législative en ce monde ne peut se vanter d'échapper à la critique. La question est de savoir si, au regard des Puissances, la Loi Foncière de 1885-86 émane d'une autorité légitime, et si elle peut être obligatoire pour les Européens résidant ou domiciliés en Tunisie.

Il nous semble difficile de contester l'affirmative.

(a.) La Loi Foncière de 1885-86 a été édictée par le Pouvoir Législatif de la Régence, c'est-à-dire par le Bey régnant, co-agissant avec le Représentant du Gouvernement Français. Elle a été promulguée par le Résident-Général de la République Française au "Journal Officiel Tunisien" des 12 Juillet, 1885, et 20 Mai, 1886.

Cette Loi, ainsi que nous l'avons démontré, contenait, dès sa promulgation, toutes les dispositions du Décret du 17 Juillet, 1888, qui n'a apporté qu'une variante de rédaction aux Articles 18 et 20, 19 et 37 de la Loi de 1885-86.

(b.) Pendant longtemps les étrangers n'ont pas pu posséder d'immeubles dans la Régence de Tunis. L'Article 113 de la Loi Organique du Code Politique et Administratif du Royaume Tunisien (1857) leur retire cette faculté que l'Article 11 du Pacte Fondamental leur avait accordée. (Voir pages 31 et 10 de l'exemplaire de la Loi Organique, Bône, 1860, au dossier.)

Par Traité du 10 Octobre, 1863, confirmé en 1875, l'Angleterre obtient du Bey de Tunis un meilleur traitement. Les Anglais pourront désormais acheter et posséder

des immeubles conformément aux lois et usages du pays (Article 1^{er}). Les cas litigieux concernant la propriété immobilière entre Anglais et Tunisiens sont déferés aux Tribunaux légaux compétents (entre Anglais, l'option pour la juridiction Consulaire est réservée).

Mêmes avantages ont été également reconnus par Traité à la France, à l'Autriche, à la Prusse, et à l'Italie.

Il résulte du Traité Anglo-Tunisien, type des Traités conclus entre la Tunisie et les Puissances, que les Anglais devront se conformer à la Loi locale pour l'acquisition et la vente des immeubles et qu'en cas de contestation les Tribunaux locaux statueront.

Mais il ne s'ensuit pas que la Tunisie ait abdiqué son droit souverain de modifier ses lois foncières et l'organisation des Tribunaux qui doivent en faire l'application, ni qu'elle se soit engagée à consulter les Puissances pour opérer ce changement d'ordre intérieur.

En 1885-1886, la Tunisie agissant de concert avec la France, n'a donc fait qu'user de son droit en modifiant l'une et l'autre dans un sens qu'elle estimait progressif, puisque son œuvre était inspirée par une nation de culture Européenne. Tel a été le sentiment des Puissances, car aucune d'elles n'a protesté contre la promulgation en Tunisie de la Loi Foncière de 1885-86.

La Loi Foncière de 1885-86 est, à titre de loi réelle, obligatoire pour tous ceux qui résident en Tunisie. Elle ne porte aucune atteinte aux droits octroyés aux Européens par Traités. En effet, le Traité Anglo-Tunisien de 1863 et ses analogues, ne garantissaient aux Européens que le traitement du national. Ce traitement est toujours assuré aux Européens par la législation nouvelle; elle ne fait aucune distinction de race ou de nationalité: étrangers, indigènes et Français sont placés sur le même pied.

La Loi Foncière de 1885-86 est donc tout à la fois régulière dans ses origines et obligatoire pour tous.

Ceci dit, une observation importante doit être faite. Le législateur de 1885-86, animé d'un esprit de véritable modération, a pensé qu'il ne convenait pas, encore qu'il en eut le droit, d'imposer de force son œuvre. Il a préféré la recommander au choix des intéressés, plutôt que de la leur faire subir. Il a estimé que l'ancien état de choses soulèverait peut-être quelques regrets. Assurément, dans ses prévisions, ces regrets ne se produiraient que chez les indigènes, et son étonnement doit être profond aujourd'hui en voyant un Consul demander qu'on ramène les Européens au régime Musulman.

Quoi qu'il en soit, il a été réservé à ceux qui demeuraient attachés au régime Arabe d'y rester soumis. Ainsi que nous l'avons dit, la législation et la juridiction Tunisiennes ont été conservées comme législation et juridiction ordinaires de la Régence. Les Anglais possédant des immeubles en Tunisie n'ont besoin de remplir aucune formalité pour en jouir: il leur suffit de ne pas requérir "l'immatriculation" de leurs immeubles. Grâce à ce fait négatif, le chaos des anciennes lois immobilières Tunisiennes reste leur lot; ils demeurent justiciables du Charâa de Tunis et des Charâas et Tribunaux de Cadix de l'Intérieur dont le fonctionnement touffu est réglé par les soixante Articles du Décret Beylical du 30 Rabia-el-Tani, 1293 (25 Mai, 1876).

La seule modification à l'état de choses antérieur au 31 Décembre, 1883, c'est que là où le pouvoir judiciaire du Consul Anglais avait été réservé par Article IV du Traité Anglo-Tunisien du 10 Octobre, 1863 (mise à exécution de la sentence du Charâa, connaissance facultative des procès entre Anglais), le Consul sera remplacé par les autorités Françaises de la Régence. C'est donc le Tribunal Français qui sera chargé de l'exécution des Jugements du Charâa, c'est lui encore qui connaîtra des procès immobiliers entre Anglais, tout en leur faisant application de la loi Musulmane de Tunis, au cas où deux Anglais en procès, tout en se plaçant sous la loi Musulmane, préféreraient la juridiction Européenne à la juridiction Musulmane.

Cette dernière hypothèse, dans la pensée de M. le Consul Anglais à Tunis, se vérifiera rarement, puisqu'il recommande avant tout aux Européens d'éviter le contact du Tribunal Français. Ses compatriotes devront préférer se présenter devant les Juges Musulmans des Charâas.

Donc, en principe, un Anglais propriétaire d'immeuble en Tunisie, peut rester sous la loi et la juridiction Musulmanes; il n'a qu'à ne pas faire "immatriculer" son immeuble. Si un conflit s'élève entre lui et un autre de ses compatriotes au sujet de cet immeuble, il jouira encore de l'avantage d'être jugé par des Musulmans, l'option pour le Tribunal Français (remplaçant depuis le 31 Décembre, 1883, le Tribunal Consulaire Anglais) n'étant que facultative, comme elle l'était par l'Article IV du Traité Anglo-Tunisien de 1863.

Mais M. le Consul suppose le cas où un Arabe requiert l'immatriculation d'une terre sur laquelle un Maltais, sujet Britannique, prétend des droits. Comme il s'agit d'immatriculation, le Tribunal Mixte, ou le Tribunal Civil Français à son défaut, vont donc être compétents, et le Maltais sera contraint d'aller devant une juridiction qui a la grande infériorité de renfermer des éléments Français.

Cette éventualité fâcheuse, pour M. le Consul, nous paraît pouvoir être atténuée dans une certaine mesure. Quel est l'idéal à ses yeux? Écarter l'élément Français, rechercher l'élément Arabe.

D'abord le Maltais pourra facilement éviter le Tribunal Civil Français ordinaire puisque, pour que son opposition à immatriculation soit portée devant cette juridiction, il faut qu'il le demande et qu'il n'engage pas son procès au fond devant le Tribunal Mixte (Article 36 de la Loi de 1885-86). Il lui suffira donc de ne rien demander et d'engager son affaire au fond devant le Tribunal Mixte.

Nous reconnaissons que le Maltais, formant opposition à l'immatriculation d'un immeuble, devra alors soutenir cette opposition devant le Tribunal Mixte. Mais là encore ses efforts, pour écarter l'élément Européen, et obtenir l'élément Arabe de cette juridiction, ne seront pas sans résultat.

L'Article 34 de la Loi de 1885-86 nous semble se prêter au desideratum. Le Tribunal Mixte est composé de Français et de Musulmans; ces éléments se groupent suivant la nationalité des parties en cause. Le législateur a voulu que la chambre fût Musulmane pour les Musulmans, Européenne pour les Européens, mixte quand les deux nationalités étaient en présence; mais il a considéré que la composition Européenne de la Chambre était une faveur et une garantie pour l'Européen; du moment que l'Européen refuse cette faveur, elle ne lui est pas imposée. Dans l'espèce proposée qui met en présence un Arabe requérant l'immatriculation et un Maltais y formant opposition, la tendance naturelle de l'Arabe est que la Chambre du Tribunal Mixte soit Arabe, celle du Maltais qu'elle soit Européenne; au rebours de toute présomption, si le Maltais est pénétré de cette idée que ce qui est Musulman est préférable, et souhaite une composition Arabe, il sera vite d'accord avec son adversaire; il est hors de doute qu'en présence de l'accord commun, les parties ne soient renvoyées à la chambre exclusivement Musulmane du Tribunal. Dans une certaine proportion, le Maltais aura donc obtenu d'être jugé par des Arabes.

Il nous faut toutefois reconnaître que, dans l'hypothèse proposée, le Maltais ne peut être jugé par le Tribunal du Charâa, et que la Loi de 1885-86, sous l'empire de laquelle il se trouve placé par le fait même d'avoir formé opposition à une procédure d'immatriculation introduite par un Arabe, ne lui permet pas d'appeler contre la décision du Tribunal Mixte ni devant un autre Tribunal Arabe ni, au pis aller, devant le Tribunal Civil Français.

Ici, nous ne pouvons nous abstenir d'une réflexion d'ordre général qui nous est inspirée par cet exemple de l'Arabe et du Maltais. N'y a-t-il pas, dans ce spectacle, une singularité bien faite pour frapper l'observateur? Une Puissance civilisatrice édicte, dans l'intérêt des Européens, une Loi toute d'inspiration Européenne; l'indigène mu par un instinct sûr, va vers elle, comme vers un ordre de chose plus élevé et plus solide; l'Européen, au contraire, recherche dans le passé une législation confuse, abandonnée par ceux mêmes qui l'ont expérimentée.

L'Arabe serait libre de s'adresser au Charâa et d'avoir des Juges de sa race; il aspire à la loi et à la juridiction de source Européenne. On a tout fait pour que l'Européen retrouvât, en un pays si différent du sien par les mœurs et les idées, les règles auxquelles sa culture l'a habitué; il veut retourner en arrière vers des formes inférieures!

Revenant au droit positif, nous ne pensons pas que le droit du Maltais aille au-delà de ce que nous avons indiqué.

Le Maltais, comme sujet Britannique, peut se réclamer du Traité Anglo-Tunisien de 1863, confirmé en 1875, mais l'Article IV de ce Traité n'a pas garanti aux Anglais la jouissance du Tribunal du Charâa, et l'avantage discutable d'être exclusivement jugés en matière immobilière par des Arabes; il leur a seulement promis que les cas litigieux concernant la propriété immobilière entre Anglais et Tunisiens "seraient déferés pour être réglés aux Tribunaux légaux compétents."

La Régence, usant du droit incontestable qui appartient à tout État, a complété son organisation judiciaire en établissant une juridiction parallèle à la juridiction Arabe ou Tribunal du Charâa.

Tout intéressé peut s'adresser à l'une ou à l'autre de ces juridictions. Mais, quand il a fait son choix, il est naturel que le tiers qui lui conteste son droit le suive sur le terrain judiciaire où il s'est placé.

La juridiction du Tribunal Mixte est, depuis 1885-86, suivant les termes mêmes de l'Article IV du Traité Anglo-Tunisien de 1863, "un Tribunal légal compétent" dans la Régence; rien autre n'avait été conventionnellement stipulé.

On critique l'institution du Tribunal Mixte. Que ne pourrait-on pas dire aussi du Tribunal Indigène du Charâa? Mais qu'importe au point de vue du droit conventionnel. Les Puissances, bénéficiaires de Traités analogues au Traité Anglo-Tunisien de 1863, ne peuvent pas prétendre que les engagements pris envers elles par la Régence ne sont pas observés parce que le Tribunal Mixte ou le Tribunal du Charâa ne sont pas conformes à telle ou telle conception juridique.

Si imparfait qu'ait été le fonctionnement du Charâa, seule juridiction existante jusqu'en 1885 (nombre de bons esprits pensent au rebours de M. le Consul que l'idéal de la justice n'est pas la justice Musulmane), l'Europe a dû le subir, parce que le Charâa était "le Tribunal compétent;" de même la juridiction parallèle du Tribunal Mixte, encore que dans des espèces déterminées elle puisse présenter des inconvénients, s'impose aujourd'hui par la même raison qu'elle est dans la Régence "un Tribunal légal compétent."

Les Puissances, selon nous, auraient eu seulement un droit de remontrance envers la Régence, si celle-ci, sous le nom de Tribunal Mixte, n'avait organisé qu'une comédie de la justice, et si ce Tribunal, sous le vain appareil des formes judiciaires, ne recouvrait que la corruption et l'arbitraire. Il est inutile de dire que le Tribunal Mixte fonctionnant sous la présidence générale d'un Magistrat Français n'a jamais été effleuré d'un pareil soupçon.

Encore que les objections spéciales formulées contre la Loi de 1885-86 nous paraissent sans utilité pratique, puisque l'organisation judiciaire établie par elle s'impose aux Puissances à raison de son caractère de "Tribunal légal compétent," il convient cependant de ne pas les laisser sans réponse.

M. le Consul se plaint que les décisions du Tribunal Mixte soient irrévocables et sans appel; il se demande si le Décret du 17 Juillet, 1888, qui aurait donné ce caractère définitif aux dites sentences, ayant été rendu par le Président de la République Française seul, émane du pouvoir compétent.

(a.) Il est sans intérêt de rechercher si le Président de la République peut, par simple Décret, légiférer en Tunisie, car le Décret du 17 Juillet, 1888, ainsi que nous l'avons amplement démontré *supra* (p. 5), n'a rien ajouté à la Loi de 1885-86. Or, la validité de cette Loi n'est contestée par personne. Le caractère définitif des décisions du Tribunal Mixte, encore une fois, n'a pas été décidé par le Décret du 17 Juillet, 1888, mais par l'Article 37 de la Loi des 1^{er} Juillet, 1885, et 16 Mai, 1886. Le Décret, ne faisant que répéter la Loi, est parfaitement valide.

(b.) Il est exact que le Tribunal Mixte est chargé des contestations immobilières, puisqu'il est nanti de l'examen des oppositions faites aux réquisitions d'immatriculation; c'est devant lui que sont produits les titres litigieux, que s'ouvrent les enquêtes, que les parties fournissent leurs dires respectifs. C'est lui qui, après ce débat contradictoire, décide que tel immeuble doit être inscrit au nom de telle personne, et non au nom de telle autre, que telle prétention sur l'immeuble n'est pas fondée, que telle autre est, au contraire, admissible. Ces décisions, il est vrai, sont définitives.

On sait à quels désordres le législateur de 1885-86 a voulu remédier. Nous renvoyons aux détails que nous avons donnés (p. 3 et suivantes).

Le remède lui a paru être une Loi meilleure, plus certaine, d'un caractère Européen, dont l'usage resterait cependant facultatif, afin que la condition des gens ne fut pas améliorée malgré eux et qu'ils fussent libres de demeurer dans le gâchis juridique antérieur, si telle était leur préférence. Mais en même temps, le législateur a pensé qu'il convenait que l'usage de cette Loi ne fut pas indéfiniment suspendu pour ceux qui voulaient en jouir. Il a estimé qu'il y avait intérêt à ce que le point de départ de la propriété fût fixé promptement et définitivement: de là l'institution du Tribunal Mixte avec sa composition Franco-Arabe, se constituant de l'un ou l'autre élément, suivant la nationalité des parties en cause, et statuant définitivement.

Ce pouvoir exceptionnel de décider sans recours lui a été donné parce que le Tribunal Mixte est un véritable Tribunal Arbitral, et qu'il est de la nature des Tribunaux de cette nature de statuer en dernier ressort.

Le Tribunal Mixte n'opère pas comme les notaires Tunisiens chargés de la rédaction des "outikas" en s'informant au hasard auprès des voisins; il procède sous la surveillance de Magistrats Français avec l'assistance du Conservateur de la propriété foncière, d'un service topographique, et des autorités administratives et judiciaires tant Françaises qu'indigènes.

La procédure suivie par le Tribunal Mixte est conforme à celle des arbitres

médiateurs plutôt qu'à celle des Juges; il réunit les voisins, les tiers intéressés, tous ceux qui émettent des prétentions, il les interroge, leur explique la portée de l'enquête poursuivie, discute les réclamations, s'applique à déjouer les usurpations des uns et les chicanes des autres, fait appel à l'esprit de conciliation, encourage les transactions, et liquide les conflits ouverts.

Le sérieux avantage des pouvoirs définitifs donnés au Tribunal Mixte est la fixation irrévocable de la propriété sur la tête de son détenteur régulier. Les indigènes doivent produire en une fois et dans un délai limité leurs revendications; il n'y a plus de place pour les fraudes compliquées que nous avons rappelées (p. 3). La propriété est purgée des procès occultes qui pouvaient peser sur elle. Une fois l'immatriculation accomplie, les limites confuses de l'immeuble sont nettement établies; le Conservateur de la propriété foncière en consacre l'existence précise; le propriétaire, sans crainte de trouble, peut dès lors se livrer à une exploitation paisible de son domaine.

Ces considérations nous amènent à penser que l'institution du Tribunal Mixte, avec les pouvoirs étendus que lui confère la Loi de 1885-1886, étant donné les circonstances particulières où se trouvait la propriété foncière en Tunisie, n'est contraire ni aux règles d'une bonne et prudente Administration, ni aux principes supérieurs de la justice et de l'équité dont une nation civilisée ne doit jamais se départir dans l'organisation des pays hors-Chréienté qu'elle place sous protection et sa haute influence.

Nous venons d'exposer les raisons pour lesquelles se justifie, selon nous, le pouvoir accordé au Tribunal Mixte de statuer sans appel; nous terminons par une observation pratique.

Le Tribunal Mixte, à caractère arbitral et à procédure économique, n'est un Tribunal de dernier ressort que pour ceux qui le veulent bien; pour les autres, il leur est loisible de s'assurer les formes de la justice ordinaire.

En effet, l'Article 36 de la Loi de 1885-86 s'exprime ainsi: "Dans le cas où une opposition à une immatriculation serait formée par un justiciable des Tribunaux Français, il sera loisible à ce dernier de la porter devant la juridiction Française, pourvu qu'il le fasse avant toute défense au fond, &c. . . ."

"Auquel cas le Tribunal Mixte sursoiera à statuer sur l'admissibilité de la demande à fin d'immatriculation, jusqu'après décision, passée en force de chose jugée, du Tribunal compétent."

Appliquant ces règles à l'exemple proposé de l'Arabe requérant l'immatriculation d'un immeuble et du Maltais, sujet Britannique, y formant opposition, ce dernier peut à son gré éviter le Tribunal Mixte. Pour cela, il suffit au Maltais de se borner à notifier son opposition au Tribunal Mixte et de porter le fond de sa prétention devant la juridiction Française. C'est incontestablement le droit du Maltais puisque, à titre de sujet Britannique, il est justiciable des Tribunaux Français (combinaison du Décret du 5 Mai, 1883, et de "l'Order in Council" du 31 Décembre, 1883.)*

En agissant ainsi, la procédure sera suspendue devant le Tribunal Mixte, jusqu'à ce que le Maltais ait fait prononcer sur son droit par le Tribunal Civil Français. Il aura certainement le bénéfice de l'appel, en cas d'échec, et jouira du bénéfice d'une double juridiction, puisque la procédure devant le Tribunal Mixte ne pourra être reprise "qu'après décision passée en force de chose jugée," ce qui implique la faculté de recourir à la Cour d'Appel dont relève le Tribunal Civil Français de Tunis.

Maintenant renversons l'exemple sur lequel nous raisonnons. Supposons que le sujet Britannique, au lieu d'être opposant à une immatriculation d'immeuble requise par un tiers, soit lui-même requérant à fin d'immatriculation. Dans ce cas, le sujet Britannique n'aura aucun motif de querelle contre la Loi de 1885-86 puisque c'est volontairement qu'il s'y soumet; nous savons que l'emploi de cette Loi est facultatif, qu'il pouvait, en ne lui faisant aucune avance, rester sous l'empire de la loi et de la justice Musulmanes, législation et juridiction de droit commun pour les immeubles en Tunisie.

Mais si le sujet Britannique a opté pour la loi civilisée, sa préférence ne lui ménage aucune déception. Car, de deux choses l'une, ou sa requête à fin d'immatriculation sera admise et dans ce cas il obtiendra ce qu'il demandait, ou sa requête sera rejetée et dans ce cas le Tribunal Mixte n'est pas pour lui une juridiction de dernier degré. En effet, la Loi de 1885-86 dit dans la deuxième partie de son Article 37: "Il (le

* Voir en ce sens: Cour d'Appel d'Alger, 30 Mai, 1888, notre "Journal du Droit International Privé," Nos. VII-X, 1889.

Tribunal Mixte) prononcera l'admission ou le rejet, en tout ou en partie, de l'immatriculation, &c. . . . En cas de rejet, les parties seront renvoyées à se pourvoir devant la juridiction compétente." Par ces derniers mots, il faut entendre que le requérant, justiciable des Tribunaux Français, en sa qualité de sujet Britannique, pourra reprendre sa demande tendant à faire fixer sur sa tête la propriété prétendue de l'immeuble en question devant le Tribunal Civil Français de Tunis et la Cour d'Appel dont ce Tribunal relève.

La Loi de 1885-86 contient enfin dans son Article 38 une disposition indulgente que plusieurs législations Européennes lui envieront. Après l'épuisement des procédures prescrites, la propriété se trouve définitivement établie en faveur de celui qui a obtenu l'immatriculation. C'est le but essentiel de la Loi : la certitude et la stabilité dans la propriété. Mais celui qui réussirait à démontrer ultérieurement que cette immatriculation fait grief à des droits, dont il n'était peut-être pas à même d'établir l'évidence lors de la procédure d'immatriculation, n'en serait pas réduit à de stériles lamentations. La Loi de 1885-86 trouve la situation de cet individu intéressante ; elle entend réparer dans une certaine mesure le tort que lui porte la *res judicata*. L'Article 38 dispose : "Toute personne dont les droits auraient été lésés par suite d'une immatriculation ou d'une inscription n'aura jamais de recours sur l'immeuble, mais seulement une action en dommages-intérêts."

Première innovation à la loi Française, et à la plupart des lois Européennes. Dans le système Continental, une fois que les Tribunaux compétents ont prononcé en dernier ressort sur la détermination d'une propriété, tant pis pour ceux que la chose jugée blesse, ils n'ont plus rien à prétendre ou à espérer.

Mais qui paiera ces dommages-intérêts ? Qui fera les frais de cette indemnité consolatrice ? Assurément ce ne pouvait être le détenteur de l'immeuble immatriculé ; sa position a été consacrée par la loi, et l'on a voulu lui éviter tout trouble dans une jouissance que l'on s'est efforcé de rendre désormais absolument paisible.

Si la loi, tout en lui laissant l'immeuble, l'avait contraint, dans certains cas, à payer une indemnité, il eut éprouvé, sous une autre forme, l'éviction partielle ou totale contre laquelle on a entendu le prémunir de la façon la plus expresse. Aussi l'Article 39 a-t-il organisé d'une façon ingénieuse un fonds spécial où ces indemnités, probablement d'ailleurs non fréquentes, seront puisées : "Il est institué un fonds d'assurance destiné à indemniser celui qui se trouverait lésé par l'immatriculation d'un immeuble ou par l'inscription ultérieure d'un droit réel. Ce fonds d'assurance sera constitué et entretenu par un droit de 1 pour 1,000 sur la valeur de l'immeuble immatriculé, et, après immatriculation, sur le montant brut des sommes et valeurs faisant l'objet de chaque inscription requise à la conservation de la propriété foncière, et par un droit fixe de 2 piastres payé pour chaque inscription ou mention d'un droit non susceptible d'évaluation. Ces droits seront toujours avancés par le requérant [sic] l'immatriculation ou l'inscription."

Nous connaissons pas en Europe de lois qui organisent le versement d'une indemnité au profit de la personne lésée par des droits définitivement consacrés par les Tribunaux. En pareille hypothèse les personnes lésées n'ont aucune compensation à attendre et en sont réduites à méditer l'austère maxime Romaine : "Vigilantibus jura succurrunt."

En résumé nous estimons, en droit, sur ce premier point, que la Loi de 1885-86 sur la propriété foncière en Tunisie, étant donné le *consortium* politique formé par la France et la Tunisie depuis 1881, le Décret du 5 Mai, 1883, et "l'Order in Council" du 31 Décembre, 1883, ensemble les Traités Anglo-Tunisiens de 1863 et de 1875, doit être considérée par l'Angleterre comme émanant d'une source légitime et ayant force obligatoire pour ses nationaux ainsi que pour les autres Européens. Nous avons la même opinion sur le Décret du 17 Juillet, 1888, qui reproduit seulement les dispositions de la Loi précitée.

De plus nous estimons, en fait, que cette Loi dont le caractère est facultatif et non impératif, loin de blesser les intérêts des Européens en matière de propriété immobilière, est destinée à fonder un régime stable et plein d'une sécurité que le passé n'a pas connue en ce pays.

2. Nous examinons maintenant le point de vue Métropolitain, c'est-à-dire, celui du Gouvernement Anglais. Ici, nous sommes placés dans un ordre d'idées différent de celui que nous avons étudié.

Le Gouvernement Anglais, envisageant la situation avec l'ampleur de vues d'une grande nation, n'a qu'une préoccupation, c'est que ses nationaux n'aient pas à subir la juridiction indigène. Ses questions trahissent cette inquiétude bien légitime.

Le Décret du 17 Juillet, 1888, n'enlèverait-il pas aux Tribunaux Français la connaissance de tous les litiges en matière immobilière ?

L'effet de ce Décret et de la législation foncière actuelle en Tunisie ne serait-il pas de remettre les cas litigieux en matière immobilière intéressant les sujets Britanniques, à la juridiction Musulmane du Bey de Tunis ?

Au point de vue précédemment examiné, une seule chose était souhaitable pour les sujets Britanniques : la législation et la juridiction Musulmanes.

Le Gouvernement Britannique, comme tout Gouvernement Européen, n'éprouve, au contraire, qu'une crainte, c'est que ses nationaux soient privés du bienfait d'une loi et d'une juridiction d'origine civilisée.

Comme on a pu le voir par les développements précédents, le Gouvernement Britannique peut être rassuré sur la portion du Décret du 17 Juillet, 1888.

Ce Décret n'apporte aucun changement à l'état juridique en matière immobilière fondé par la Loi de 1885-86. Il n'a fait que préciser le texte, pourtant déjà très clair, des Articles 18 et 20, 19 et 37, de la dite Loi.

Le Décret de 1888 et la Loi de 1885-86, loin d'enlever aux sujets Britanniques le bienfait d'une juridiction Européenne, se complètent l'un l'autre pour le leur assurer énergiquement.

Tout sujet Britannique qui voudra profiter de cette juridiction n'a qu'à en manifester la volonté.

Les sujets Britanniques sont, en effet, justiciables des Tribunaux Français à titre de "nationaux d'une Puissance amie ayant supprimé ses Tribunaux Consulaires" (Décret du 5 Mai, 1883, et "Order in Council" du 31 Décembre, 1883). Comme tels, la juridiction Française leur est acquise, s'ils le veulent.

En matière immobilière nous supposons que le sujet Britannique aura les différentes positions suivantes :

Le sujet Britannique sera détenteur d'un immeuble depuis longtemps acquis. Pour jouir de la juridiction et de la législation Européennes dans la défense de ces droits actifs ou passifs contre un adversaire éventuel, il n'aura qu'à faire immatriculer son immeuble (Articles 18 et 20 de la Loi de 1885-86).

Le sujet Britannique acquerra actuellement un immeuble. Mêmes avantages avec les mêmes formalités.

Le sujet Britannique se croit lésé dans ses droits par une immatriculation d'immeuble requise par un tiers ; il n'a qu'à former une opposition devant le Tribunal Mixte. Ce Tribunal à allure de Justice de Paix ; lui convient-il ?* Le sujet Britannique débat devant lui ses prétentions. Le sujet Britannique préfère-t-il, au contraire, le Tribunal Civil Français, avec la possibilité d'un double degré de juridiction ? Il n'a qu'à ne pas engager le fond de sa contestation ("the merit of the case") devant le Tribunal Mixte, et le transporter devant le Tribunal Civil Français. Le Tribunal Mixte surseoir à statuer jusqu'après décision passée en force de chose jugée (Article 36 de la Loi de 1885-86, rédaction modifiée du 6 Novembre, 1888).

Dans toutes les hypothèses, le sujet Britannique bénéficie de la juridiction Européenne, s'il attache à celle-ci le prix qu'il convient. Ce n'est que lorsqu'il le veut absolument qu'il reste soumis à la juridiction Musulmane. Le Protectorat, tout en croyant réaliser un progrès par l'institution d'une loi et d'une justice Européenne pour les matières immobilières, n'a pas entendu, on le sait, imposer son œuvre. Elle ne profite qu'à ceux qui viennent à elle.

La condition faite aux Anglais en Tunisie par les Traités de 1863 et de 1875 s'est donc améliorée. Par ces Traités les Anglais ne pouvaient prétendre, dans les cas litigieux immobiliers, qu'à l'application de la loi Musulmane par la juridiction Musulmane† (Article IV du Traité du 10 Octobre, 1863). Aujourd'hui ils ont le choix entre le régime Arabe et le régime Européen.

Ce qu'il importait d'établir, parce que le Gouvernement Britannique n'a, avec juste raison, que le souci de savoir si le régime Européen est assuré à ses nationaux, c'est que le prétoire Européen est absolument ouvert à tous les Anglais qui entendront confier à son impartialité la discussion de leurs intérêts immobiliers.

* Le Tribunal Mixte est placé sous la présidence d'un Magistrat Français. Si le débat s'élève entre Européens, la Chambre qui statue est exclusivement composée de Magistrats Français. La Chambre Mixte dans laquelle entrent deux Magistrats Tunisiens n'intervient qu'en cas d'Arabe en cause (Article 34, Loi de 1885-86), et encore la présidence du Magistrat Français, Président du Tribunal, est-elle obligatoire ; ce qui assure la majorité à l'élément Européen.

† Sauf le cas d'une contestation entre sujets Anglais, dont la décision pouvait être remise au Comul Anglais, lequel faisait application de la loi Musulmane.

IV.

Nous constatons pour mémoire qu'en toute matière la juridiction Française est assurée aux sujets Britanniques en Tunisie, dans les mêmes conditions qu'aux Français.

En matière mobilière et personnelle, il n'y a jamais eu de doute pour personne; l'Article 2 de la Loi du 18 Avril, 1883, dit: "Ces Tribunaux (les Tribunaux Français) font partie du ressort de la Cour d'Alger. Ils connaissent de toutes les affaires civiles et commerciales entre Français et protégés Français et réservent d'étendre leur compétence à toute autre personne."

Cette extension a été réalisée par le Décret du 5 Mai, 1883, qui édicte expressément: que les nationaux des Puissances amies dont les Tribunaux Consulaires seront supprimés "deviendront justiciables des Tribunaux Français dans les mêmes cas et dans les mêmes conditions que les Français eux-mêmes."

Enfin, l'Article 1^{er} du Décret du 31 Juillet, 1884, s'exprime ainsi:—

"Les Tribunaux Français connaîtront, à partir de la promulgation du présent Décret, de toutes les affaires civiles et commerciales dans lesquelles des Européens seront en cause, dans les matières où ils sont compétents actuellement lorsque des Européens sont défendeurs."

En matière immobilière, la Loi de 1885-86, confirmée par le Décret du 17 Juillet, 1888, organise cette juridiction au profit des Anglais qui la désirent. C'est l'objet principal de la présente étude.

En matière criminelle, la juridiction Française est seule compétente pour juger un sujet Britannique.

En effet, l'Article XXIV du Traité Anglo-Tunisien du 19 Juillet, 1875, précisant à nouveau des règles consacrées par les anciennes Capitulations, stipule: "En toute cause ou action criminelle où le plaignant et le prisonnier sont sujets Britanniques, comme en tous différends, procès ou litiges qui pourront surgir entre sujets Britanniques exclusivement, le seul juge et arbitre sera l'Agent ou Consul-Général de Sa Majesté, le Consul ou autre autorité Britannique. Nul n'interviendra, et les parties relèveront uniquement des Tribunaux Consulaires Britanniques."

Or, depuis "l'Order in Council" du 31 Décembre, 1883, le pouvoir judiciaire qui appartenait aux Consuls Britanniques a passé aux Tribunaux Français:—

"Her Majesty the Queen has consented to abandon her Consular jurisdiction, with a view to British subjects in the Regency becoming justiciable by the said French Tribunals under the same conditions as French subjects."

Enfin le Décret du 2 Septembre, 1885, dans son Article 1^{er}, dispose comme suit:—

"Les Tribunaux Français en Tunisie connaîtront désormais dans les limites de leur compétence respective et en conformité de la loi Française: (1) de tous crimes ou délits commis en Tunisie par des sujets Tunisiens au préjudice des Français ou protégés Français, et des Européens ou protégés des diverses Puissances Européennes; (2) de tous crimes ou délits commis en Tunisie par des sujets Tunisiens lorsque des Français ou protégés Français, et des Européens ou protégés des diverses Puissances Européennes, seront auteurs, coauteurs ou complices."

Le Tribunal Criminel Indigène n'existe que pour les indigènes et lorsqu'il n'y a que des intérêts indigènes en cause.

On sait que les Tribunaux Indigènes sont au nombre de deux: le "Charâa," Tribunal religieux, appliquant le Coran à titre de Code Civil, dont nous avons vu la compétence en matière immobilière, et "l'Ouzara," sorte de Tribunal Administratif, divisé lui-même en deux sections, la section civile et la section pénale. Cette section pénale est tout à la fois une juridiction d'instruction et de condamnation. Elle soumet une sorte de projet de jugement à la signature du Ministre de la Plume et du Premier Ministre. Le jugement ne devient définitif que par l'acquiescement du Bey. Les pénalités sont: l'amende, la prison, le bagne, ou la mort. Les condamnations à mort sont prononcées par le Bey en personne, au Bardo.

Cette juridiction n'intéresse plus les Européens, puisque désormais non seulement si leurs personnes, mais encore si leurs intérêts matériels sont en cause dans une affaire criminelle, c'est un Tribunal Européen qui seul est compétent.

Fait à Paris, le 23 Septembre, 1889.

(Signé)

ÉD. CLUNET,
Avocat à la Cour de Paris.